FILED

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CVS 2336

NORTH CAROLINA STATE BOARD
OF DENTAL EXAMINERS,

Plaintiff,

vs.

DENTALCARE PARTNERS, INC;
DENTAL ONE, INC;
DCP EQUITY PARTNERS, LLC;

DCP OF BURLINGTON NC, LLC;
DCP OF CARMEL VILLAGE (CHARLOTTE), LLC;
DCP OF CARY, LLC;
DCP OF CHARLOTTE, LLC;
DCP OF CONCORD (CHARLOTTE),LLC;
DCP OF CRABTREE MALL, LLC;
DCP OF DURHAM, LLC;
DCP OF FAYETTEVILLE (RALEIGH), LLC;
DCP OF GASTONIA, LLC;
DCP OF GREENSBORO, LLC;
DCP OF GREENVILLE NC, LLC;
DCP OF HICKORY (CHARLOTTE), LLC;
DCP OF HIGH POINT (GREENSBORO);
DCP OF HOPE MILLS (131), LLC;
DCP OF HUNTERSVILLE (CHARLOTTE), LLC;
DCP OF JACKSONVILLE, LLC;
DCP OF LELAND (WILMINGTON), LLC;
DCP OF LEXINGTON, LLC;
DCP OF MATTHEWS(CHARLOTTE), LLC;
DCP OF MONROE (CHARLOTTE),LLC;
DCP OF RAEFORD (125), LLC;
DCP OF SALISBURY (CHARLOTTE), LLC;
DCP OF SOUTH POINTE (DURHAM), LLC;
DCP OF WAKE FOREST (RALEIGH) LLC;
DCP OF WENDOVER (GREENSBORO), LLC;
DCP OF WILMINGTON, LLC;
DCP OF WINSTON-SALEM, LLC;
DCP Defendants

DRS. AGUERO, HUGHES & ASSOC.;
BEATRIZ R. AGUERO D.D.S. & ASSOCIATES II, P.A.;
BEATRIZ R. AGUERO D.D.S. & ASSOCIATES IV,P.A.;
DRS. ALSTON, JOHAL & DUNNING, P.A.;
DRS. CAMERON & ROMAN I, P.A.;
DRS. CAMERON, ROMAN & ASSOC.,II, P.A.;
DRS. CAMERON & ROMAN III, P.A.;
DRS. GHODKE, LINDSEY & ASSOC.,P.A.;
DR. HUMBLE & ASSOC., P.A.;
DRS. JOHAL, DUNNING & ASSOC. P.A.;
DRS. JOHAL, DUNNING & ASSOC. II, P.A.;

COMPLAINT AND PETITION FOR PERMANENT INJUNCTION

DRS. JOHAL, DUNNING & ASSOC. IV, P.A.;)
DRS. JOHAL, DUNNING & ASSOC. V, P.A.;)
DRS. JOHAL, DUNNING & ASSOC. VI, P.A.;)
DRS. JOHAL, DUNNING & ASSOC. VII, P.A.;)
DR. LEE & ASSOCIATES II, P.A.;)
DR. LEGLER & ASSOCIATES, P.A.;)
DR. McCLARY & ASSOCIATES III, P.A.;)
DR. McCLARY & ASSOCIATES II, P.A.;)
DR. R. EDWARD MOORING, JR. & ASSOC. P.A.;)
DRS. PATEL, ALSTON & ASSOC., P.A.;)
DR. CHRISTOPHER M. SILVOY, DMD & ASSOC. PA;)
DR. SILVOY & ASSOCIATES I, P.A.;)
DR. SMITH & ASSOCIATES IV, P.A.;)
BENSON J. YBANEZ D.D.S. & ASSOC., P.A.;)
BENSON J. YBANEZ, DDS & ASSOC. II, P.A;)
DR.YOUSSEF & ASSOCIATES, P.A.;)
)
BEATRIZ R. AGUERO; STACEY D. ALSTON;)
CLIFTON SMITH CAMERON; JOSEPH M. CURLEY;)
RICHARD B. DUNNING; MANISHA N. GHODKE;)
TIMOTHY HUGHES; LINDSEY R. WILLIAMS;)
PEERANAN SONGLIN LEE; ROBERT JOHN LEGLER;)
ADRAI F. LINDSEY; JOTINDER K. JOHAL;)
RANDALL LEE McCLARY; RONALD EDWARD)
MOORING, JR.; HARISH B. PATEL; ERIC JAMES)
ROMAN;CHRISTOPHER M.SILVOY; JAMES)
NELSON SMITH; BENSON J. YBANEZ; NABIL)
NAGUIB YOUSSEF, JR.;)
Necessary-Party Defendants)

NOW COMES the North Carolina State Board of Dental Examiners ("the Dental Board"), by and through its undersigned counsel, and alleges as follows:

INTRODUCTION

1. Plaintiff, the Dental Board, complaining of the Defendants, in accordance with N.C. Gen. Stat. §§ 90-40.1, 90-40.2 and Rule 65 of the North Carolina Rules of Civil Procedure respectfully moves the Court for injunctive relief enjoining the Defendants from engaging in or aiding and abetting activities constituting the unlicensed practice of dentistry and for other relief, including enjoining some of the Defendants from enforcing certain provisions of their

agreements with North Carolina licensed dentists and their professional entities, which provisions threaten the continuity of dental care for thousands of patients in North Carolina.

2. This suit involves the ownership, operation and control of 27 separate dental practices located throughout the State of North Carolina by DentalCare Partners, Inc., Dental One, Inc., DCP Equity Partners, LLC, and various related and subsidiary entities or LLCs, which are referred to collectively as the "DCP Defendants." These 27 North Carolina dental practices are hereinafter referred to collectively as the "NC Dental Practices."

3. Each Dental Practice operates under the name of one of the North Carolina Defendant Professional Associations (Practice PAs). Each Defendant Practice PA is owned by one or more of the Dentist Defendants. DCP also created a Limited Liability Company for each of the 27 Dental Practices (Practice LLCs), ostensibly to provide management services. In fact, the Defendant Practice LLCs effectively own and control the Dental Practices, in violation of the North Carolina Dental Practice Act.

4. The DCP Defendants own and operate two types of Dental Practices in North Carolina: "Staff Model Dental Practices" and "Partner Model Dental Practices."

5. The Staff Model Practices are owned and operated entirely by the DCP Defendants. These Practices operate under the name of one of the Practice PAs but the dentists that work in those locations have no ownership interest in the Practices.

6. The Partner Model Practices are majority owned and controlled by the DCP Defendants. One or more Partner Dentists have an ownership interest in these Dental Practices but the Partner Dentists' collective ownership interests are never a majority for any Practice.

7. For almost a decade, the DCP Defendants repeatedly represented to the Dental Board and others that they merely provide management services to the NC Dental Practices and

Practice PAs through the Practice LLCs. In 2012, every dentist with an ownership interest in the NC Dental Practices approached the Dental Board with information regarding the DCP Defendant's concealment from the Dental Board of the true nature of its arrangements with the Dental Practices.

8. The documentation provided by these dentists and evidence obtained during the Dental Board's subsequent investigation, including admissions by the DCP Defendants, demonstrate that they do not merely provide management services to the Dental Practices. Rather, the DCP Defendants operate, equitably own and effectively control each of the 27 NC Dental Practices. The DCP Defendants also receive all or most of the profits for each of the 27 NC Dental Practices. This evidence also shows that the Practice PAs are mere shams or legal shells with no financial significance that were created only to create the false and deceptive appearance of compliance with North Carolina law.

9. The DCP Defendants also directly and indirectly control or influence clinical issues, including orchestrating a coordinated campaign within the NC Dental Practices to make clinically unsupported diagnoses and to provide and bill for unnecessary dental treatment.

10. The actions of the DCP Defendants constitute the unlawful or illegal practice of dentistry and are in direct violation of North Carolina law.

11. The Partner Dentists who reported the DCP Defendants' unlawful ownership of the NC Dental Practices have cooperated with the Dental Board in its investigation. They are named as necessary party defendants, along with their Practice PAs, because the injunctive relief sought by the Dental Board herein will affect them. The dentists that own the Practice PAs under which the Staff Model Practices operate also are named as necessary party defendants for similar reasons.

12. After explaining all the numerous parties and the Court's jurisdiction, Plaintiff sets forth the following subject areas among others in the Complaint:

- DCP Defendants' Deceptive Submission of Management Agreements to Dental Board for Review
- DCP Defendants' Concealment of Numerous Contracts and Agreements Showing the True and Unlawful Nature of its Contractual Arrangements with the NC Dental Practices was Recently Disclosed to the Dental Board by Partner Dentists
- DCP Defendants' Intentionally Withheld the Contractual Arrangements from the Dental Board to Conceal Its Illegal Ownership and Control of the NC Dental Practices
- DCP Defendants Unlawfully Receive All or at least a Majority of the NC Dental Practices' Profits
- DCP Defendants Charge Four Separate and Illegal "Fees" that are Based on the NC Dental Practices' Revenues and Profits
- DCP Defendants Use Duplicative Layers of Changing Fees to Conceal their Illegal Diversion of the NC Dental Practices' Revenues and Profits
- DCP Defendants Maintain Two Sets of Inconsistent Financial Records that Demonstrate Their Unlawful Ownership and Control of the NC Dental Practices
- DCP Defendants' Improper Control over NC Dental Practices through Termination Clauses and Related Provisions in the Contractual Arrangements Threatens Continuity of Care for Thousands of Dental Patients in North Carolina
- DCP Defendants' Repeatedly Admit Ownership and Control of the NC Dental Practices in Their Marketing Materials and Numerous Government Filings
- DCP Defendants' Exercise Unlawful Control Over Clinical Aspects of the NC Dental Practices, Including Aggressive Promotion of Unnecessary Dental Treatment and Unwarranted Billing of Patients in North Carolina

PARTIES

Plaintiff

13. The Dental Board is an agency of the State of North Carolina created to regulate the practice of dentistry under the authority granted it in Article 2, Chapter 90 of the North

Carolina General Statutes ("the Dental Practice Act") and the Dental Hygiene Act, Article 16, Chapter 90 of the North Carolina General Statutes. The Dental Board's principal office is located in Wake County, North Carolina.

DCP Defendants

14. Defendant DentalCare Partners, Inc. ("DCP") is a Delaware corporation that does business in North Carolina and has its headquarters in the State of Ohio. Defendant DCP's North Carolina registered agent is located in Wake County, North Carolina. Defendant DCP is not a dental professional corporation authorized to practice dentistry in North Carolina.

15. Defendant Dental One, Inc. ("Dental One" or "DOI") is a Delaware corporation with its principal place of business in the State of Texas. In 2012, Dental One filed an application with the North Carolina Secretary of State's office for a certificate to conduct business in North Carolina. Defendant Dental One's registered agent is located in Wake County, North Carolina. Dental One is not a dental professional corporation authorized to practice dentistry in North Carolina.

16. In 2007, MSD Capital, L.P., a venture capital or investment firm, acquired an interest in Dental One, which at the time was not conducting business in North Carolina. The following year, in 2008, MSD Capital, L.P. purchased a controlling interest in DCP, which had been doing and continues to do business in North Carolina.

17. On information and belief, after it purchased a controlling interest in DCP in 2008, MSD Capital, L.P. merged the operations of DCP and Dental One, sometimes operating under the trade name DentalOne Partners. DentalOne Partners is a trademark owned by Dental One and licensed by DCP, according to Dental One's website. At least since 2008, there has

been no meaningful distinction between DCP and Dental One. Since that time, the DCP, Dental One and DentalOne Partners nomenclature appear to have been used interchangeably.

18. On information and belief, the same officers and employees act on behalf of and send out communications for DCP, Dental One, and the Practice LLCs and under the trade name DentalOne Partners. The allegations herein regarding DCP's actions or conduct beginning in 2008 also refer to the actions or conduct of Dental One or any entity using the DentalOne Partners name.

19. DCP Equity Partners (hereinafter "DCP Equity") is a Delaware limited liability company with its principal office located in the State of Ohio and, on information and belief, is a wholly owned subsidiary of DCP. Defendant DCP Equity is not a dental professional corporation authorized to practice dentistry in North Carolina.

20. DCP, DCP Equity, Dental One, any entity using the name DentalOne Partners, and, when applicable, all the Practice LLCs listed in paragraphs 24 to 28 below are hereafter collectively referred to as, "the DCP Defendants."

Dental Practice Limited Liability Companies and Dental Practice Professional Associations

21. Each of the 27 NC Dental Practices operates under the name of a Practice PA. The NC Dental Practices also operate and are marketed under the trade name "Dental Works." Each Dental Practice is purportedly managed by DCP through a Practice LLC specifically set up for each Dental Practice. The 27 Practice LLCs and the 27 Practice PAs are named defendants in this action and identified in paragraphs 23 through 28 below.

Partner Model Practices

22. The DCP Defendants own and operate seventeen (17) of the Practices under the Partner Model. In the Partner Model, the seventeen Practice LLCs are owned as follows: a majority interest is owned by DCP; 0.5% is owned by DCP Equity; and a minority interest is owned by one or more dentists licensed by the Dental Board and named as necessary defendants in this suit (hereafter, "Partner Dentist"). These seventeen LLCs are hereinafter referred to collectively as the "Partner Model LLCs."

23. The seventeen (17) Practice PAs under whose name the Partner Model Practices operate are owned by one or more of the Partner-Dentist Defendants. These seventeen PAs are hereinafter referred to collectively the "Partner Model PAs."

24. DCP's seventeen (17) Partner Model Dental Practices and corresponding Defendant LLCs and PAs are as follows:

a. Dental Practice located near Concord at 2460 Wonder Drive, Suite C, Kannapolis, NC ("Concord Dental Practice,"):

    i. Defendant DCP of Concord (Charlotte), LLC (hereinafter the "Concord LLC"), and

    ii. Defendant Drs. Johal, Dunning & Associates VI, P.A. (hereinafter the "Concord PA");

b. Dental Practice located in Charlotte at 3211 Eastway Drive, Suite 10 ("Charlotte/Eastway Dental Practice,"):

    i. Defendant DCP of Charlotte, LLC (hereinafter the "Charlotte/ Eastway LLC"), and

ii. Defendant Drs. Alston, Johal & Dunning, P.A. (hereinafter the "Charlotte/Eastway PA");

c. Dental Practice located in Gastonia at 2924 East Franklin Boulevard, Suite 3 (the "Gastonia Dental Practice,"):

    i. Defendant DCP of Gastonia, LLC (hereinafter the "Gastonia LLC"), and

    ii. Defendant Drs. Johal, Dunning & Associates, P.A. (hereinafter the "Gastonia PA");

d. Dental Practice located in Hickory at 2535 Highway 70 SE, Suite 112 (the "Hickory Dental Practice,"):

    i. Defendant DCP of Hickory (Charlotte), LLC (hereinafter the "Hickory LLC"), and

    ii. Defendant Drs. Johal, Dunning & Associates V, P.A. (hereinafter the "Hickory PA");

e. Dental Practice located in Huntersville at 10011 Biddick Lane, Suite 140 (the "Huntersville Dental Practice,"):

    i. Defendant DCP of Huntersville (Charlotte), LLC (hereinafter the "Huntersville LLC"), and

    ii. Defendant Drs. Johal, Dunning & Associates IV, P.A. (hereinafter the "Huntersville PA");

f. Dental Practice located in Matthews at 2335 Matthews Township Parkway, Suite 111 (the "Matthews Dental Practice,"):

i. Defendant DCP of Matthews (Charlotte), LLC (hereinafter the "Matthews LLC"), and

ii. Defendant Drs. Patel, Alston & Associates I, P.A. (hereinafter the "Matthews PA");

g. Dental Practice located in Monroe at 1900 Wellness Boulevard, Suite 104 (the "Monroe Dental Practice,"):

i. Defendant DCP of Monroe (Charlotte), LLC (hereinafter the "Monroe LLC"), and

ii. Defendant Drs. Johal, Dunning & Associates VII, P.A. (hereinafter the "Monroe PA");

h. Dental Practice located in Charlotte at 7510 Pineville Matthews Road (the "Carmel Village Dental Practice,"):

i. Defendant DCP of Carmel Village (Charlotte), LLC (hereinafter the "Carmel Village LLC"), and

ii. Defendant Drs. Johal, Dunning & Associates II, P.A. (hereinafter the "Carmel Village PA");

i. Dental Practice located in Fayetteville at 5075 Morganton Road, Suite 12 (the "Fayetteville Dental Practice,"):

i. Defendant DCP of Fayetteville (Raleigh), LLC (hereinafter the "Fayetteville LLC"), and

ii. Defendant Drs. Cameron & Roman I, P.A. (the "Fayetteville PA");

j. Dental Practice located in Greensboro at 3724-A Battleground Avenue (the "Greensboro Dental Practice,"):

i. Defendant DCP of Greensboro, LLC (hereinafter the "Greensboro LLC"), and

ii. Defendant Drs. Aguero, Hughes & Associates, P.A. (hereinafter the "Greensboro PA");

k. Dental Practice located in High Point at 2640 South Main Street, Suite 101 (the "High Point Dental Practice,"):

i. Defendant DCP of High Point (Greensboro), LLC (hereinafter the "High Point LLC"), and

ii. Defendant Beatriz Aguero & Associates II, P.A. (hereinafter the "High Point PA");

l. Dental Practice located in Lexington at 230 Lowes Boulevard (the "Lexington Dental Practice,"):

i. Defendant DCP of Lexington, LLC (hereinafter the "Lexington LLC"), and

ii. Defendant Beatriz R. Aguero, D.D.S. & Associates IV, P.A. (hereinafter the "Lexington PA");

m. Dental Practice located in Jacksonville at 50 Office Park Drive (the "Jacksonville Dental Practice,"):

i. Defendant DCP of Jacksonville, LLC (hereinafter the "Jacksonville LLC"), and

ii. Defendant Benson J. Ybanez, D.D.S. & Associates, P.A. (hereinafter the "Jacksonville PA");

n. Dental Practice located in Cary at 226 Crossroads Boulevard (the "Cary Dental Practice,"):

   i. Defendant DCP of Cary, LLC (hereinafter the "Cary LLC"), and

   ii. Defendant Drs. Ghodke, Lindsey & Associates, P.A. (hereinafter the "Cary PA");

o. Dental Practice located in Raleigh at 4601 Glenwood Avenue (the "Crabtree Mall Dental Practice,"):

   i. Defendant DCP of Crabtree Mall, LLC (hereinafter the "Crabtree Mall LLC"), and

   ii. Defendant Dr. Christopher M. Silvoy, D.M.D. & Associates, P.A. (hereinafter the "Crabtree Mall PA");

p. Dental Practice located in Leland at 2029 Olde Regent Way, Suite 150 (the "Leland Dental Practice,"):

   i. Defendant DCP of Leland, LLC (hereinafter the "Leland LLC"), and

   ii. Defendant Dr. Smith & Associates IV, P.A. (hereinafter the "Leland PA"); and

q. Dental Practice located in Wilmington at 5225 Sigmon Road, Suite 130 (the "Wilmington Dental Practice,"):

   i. Defendant DCP of Wilmington, LLC (hereinafter the "Wilmington LLC"), and

   ii. Defendant Benson J. Ybanez, D.D.S. & Associates II, P.A. (hereinafter the "Wilmington PA").

Staff Model Dental Practices Entirely Owned by DCP

25. The DCP Defendants own and operate ten (10) of the Practices under the Staff Model. In the Staff Model, on information and belief, the remaining ten Practice LLCs are 99.5% owned by DCP and 0.5% owned by DCP Equity. They are hereinafter referred to collectively as the "Staff Model LLCs."

26. The ten (10) Practice PAs, under whose name the Staff Model Practices operate, are owned by one of the Dentist Defendants. They are hereinafter referred to collectively as the "Staff Model PAs."

27. These ten (10) Staff Model Dental Practices and the corresponding Defendant LLCs and PAs are as follows:

a. Dental Practice in Salisbury located at 1030 Freeland Drive, Suite 104 (the "Salisbury Dental Practice"):
    i. Defendants DCP of Salisbury (Charlotte), LLC (the "Salisbury LLC), and
    ii. Defendant Dr. McClary & Associates III, P.A. (the "Salisbury PA");
b. Dental Practice in Burlington located at 1595 Glidewell Drive, Suite 104 (the "Burlington Dental Practice"):
    i. Defendants DCP of Burlington NC, LLC (the "Burlington LLC"), and
    ii. Defendant Dr. Youssef & Associates, P.A. (the "Burlington PA");

c. Dental Practice in Winston-Salem located at 3210 Silas Creek Parkway, Suite 4 (the "Winston-Salem Dental Practice"):

   i. Defendants DCP of Winston-Salem, LLC (the "Winston-Salem LLC, and

   ii. Defendant Dr. R. Edward Mooring, Jr. & Associates, P.A. (the "Winston-Salem PA");

d. Dental Practice in Greensboro located at 4215 West Wendover Avenue (the "Wendover Dental Practice"):

   i. Defendant DCP of Greensboro NC, LLC (the "Wendover LLC"), and

   ii. Defendant Dr. Lee & Associates II, P.A. (the "Wendover PA");

e. Dental Practice in Greenville located at 109 Southeast Greenville Boulevard, Suite 108 (the "Greenville Dental Practice"):

   i. Defendants DCP of Greenville NC, LLC (the "Greenville LLC"), and

   ii. Defendant Dr. McClary & Associates II, P.A. (the "Greenville PA");

f. Dental Practice in Durham located at 3600 North Duke Street (the "Durham Dental Practice"):

   i. Defendants DCP of Durham, LLC (the "Durham LLC"), and

   ii. Defendant Dr. Silvoy & Associates I, P.A. (the "Durham PA");

g. Dental Practice in Wake Forest located at 11480 Capital Boulevard, Suite 115 (the "Wake Forest Dental Practice"):

i. Defendants DCP of Wake Forest (Raleigh), LLC (the "Wake Forest LLC"), and

ii. Defendant Dr. Humble & Associates, P.A. (the "Wake Forest PA");

h. Dental Practice in Fayetteville located at 2997 Hope Mills Road, Suite #C (the "Hope Mills Dental Practice"):

i. Defendants DCP of Hope Mills (131), LLC (the "Hope Mills LLC"), and

ii. Defendant Drs. Cameron & Roman III, P.A. (the "Hope Mills PA");

i. Dental Practice in Raeford located at 7780 South Raeford Road (the "Raeford Dental Practice"):

i. Defendants DCP of Raeford (125), LLC (the "Raeford LLC"), and

ii. Defendant Drs. Cameron & Roman II, P.A. (the "Raeford PA"); and

j. Dental Practice in Durham located at 7011 Fayetteville Road, Suite 104 (the "South Pointe Dental Practice"):

i. Defendants DCP of South Pointe (Durham), LLC (the "South Pointe LLC"), and

ii. Defendant Dr. Legler & Associates, P.A. (hereinafter the "South Pointe PA").

28. Each of the 27 Practice LLC's is organized in Delaware and is doing business in North Carolina. None of the 27 Practice LLC's is authorized to practice dentistry in North Carolina as a dental professional entity.

29. DCP, Dental One, and the Practice LLCs each hold a Certificate of Authority issued by the North Carolina Secretary of State to transact business in North Carolina. The registered agent for DCP, Dental One, and all 27 Practice LLCs is the Corporation Service Company in Raleigh, NC.

30. Each of the Practice PAs, except for Dr. Youssef & Associates, P.A., is a North Carolina professional association with a current valid certification of licensure issued by the Dental Board. Dr. Youssef & Associates, P.A. is a North Carolina professional association that is currently suspended by the North Carolina Secretary of State and whose certification of licensure is suspended by the Dental Board.

31. Each of the Practice PAs, except for Dr. Youssef & Associates, P.A., is owned by one or more dentists with active licenses issued by the Dental Board. Dr. Youssef & Associates, P.A. is owned by an individual whose license is currently inactive.

Individual Dentist Defendants

32. The individual defendants referenced in paragraphs 34 to 38 below are hereinafter referred to collectively as the "Dentist Defendants." All of the Dentist Defendants have been issued a license by the Dental Board to practice dentistry in the State of North Carolina.

33. All of the licenses issued by the Dental Board to the Dentist Defendants are currently active except for one. The Dental Board transferred to inactive status the license issued to Defendant Nabil Naguib Youssef, Jr. on April 1, 2012 for failure to renew his license.

34. Each of the Dentist Defendants has at least one of the following: 1) a minority interest in at least one of the Partner Model LLCs, 2) an interest in at least one of the Partner Model PAs, or 3) an interest in at least one of the Staff Model PAs. Accordingly, the rights of the Dentist Defendants could be prejudiced or affected if the relief sought in this action is granted. Therefore, the Dentist Defendants are necessary parties and are included in this lawsuit pursuant to Rule 19(a) of the North Carolina Rules of Civil Procedure.

35. The following Dentists Defendants each own a minority interest in at least one of the Partner Model LLCs and an interest in at least one of the Partner Model PAs:

a. Dr. Jotinder K. Johal is a resident of Gaston County, North Carolina.

b. Dr. Richard B. Dunning is a resident of Gaston County, North Carolina.

c. Dr. Stacey D. Alston is a resident of Mecklenburg County, North Carolina.

d. Dr. Harish B. Patel is a resident of Union County, North Carolina.

e. Dr. Clifton Smith Cameron is a resident of Cumberland County, North Carolina.

f. Dr. Eric James Roman is a resident of Cumberland County, North Carolina.

g. Dr. Beatriz R. Aguero is a resident of Guilford County, North Carolina.

h. Dr. Timothy Hughes is a resident of Guilford County, North Carolina.

i. Dr. Benson J. Ybanez is a resident of Onslow County, North Carolina.

j. Dr. Manisha N. Ghodke is a resident of Wake County, North Carolina.

k. Dr. Adrai F. Lindsey is a resident of Wake County, North Carolina.

l. Dr. Christopher M. Silvoy is a resident of Wake County, North Carolina.

m. Dr. James Nelson Smith is a resident of New Hannover County, North Carolina.

n. Dr. Joseph Curley is a resident of New Hannover County, North Carolina; Dr. Curley is an owner of the Leland PA with Dr. Smith and had agreed to purchase a portion of Dr. Smith's minority interest in the Leland LLC but did not complete the purchase, upon information and belief, because of the problems and disputes between the DCP Defendants and the Partner-Dentist Defendants, including Dr. Smith.

36. The Defendants listed in paragraph 35 a-n above are referred to collectively as the "Partner-Dentist Defendants." Their ownership interests in the respective Partner Model LLCs and PAs are set forth in their affidavits in support of the Motion for Temporary Restraining Order and Preliminary Injunction (hereafter, "TRO/PI Motion") filed contemporaneously with the Complaint.

37. The following Dentist Defendants, on information and belief, each own an interest in, or whose name is being used to operate, at least one of the Staff Model PAs: They are referred to collectively as the "Staff Dentist Defendants."

a. Dr. Randall Lee McClary is a resident of the State of Indiana and is the named owner of the Salisbury and Greenville PAs. Dr. McClary does not practice dentistry or treat patients in the Salisbury and Greenville Dental Practices.

b. Dr. Nabil Naguib Youssef, Jr. is a resident of the State of Florida and is the named owner of the Burlington PA. Dr. Youssef no longer practices dentistry or treats patients in the Burlington Dental Practice.

c. Dr. Lindsey R. Williams (formerly "Humble") is a resident of Wake County, North Carolina and is the named owner of the Wake Forest PA under her former last name. Dr. Williams no longer practices dentistry or treats patients in the Wake Forest Dental Practice.

d. Dr. Peeranan Songlin Lee is a resident of Guilford County, North Carolina and is the named owner of the Wendover PA. Dr. Lee does not practice dentistry or treat patients in the Wendover Dental Practice in Greensboro. Dr. Lee works in the High Point Dental Practice and agreed to serve as the owner of the Wendover PA at the request of the DCP Defendants, who have ignored Dr. Lee's request to be removed as the owner of the Wendover PA.

e. Dr. Ronald Edward Mooring, Jr. is a resident of Guilford County, North Carolina. Dr. Mooring works in and is the named owner of the Winston-Salem PA.

f. Dr. Robert John Legler is a resident of Durham County, North Carolina. Dr. Legler works in and is the named owner of the South Pointe PA.

38. The following Partner-Dentist Defendants also own an interest in Staff Model PAs:

a. Dr. Christopher M. Silvoy is the owner of the Durham PA and worked in the Durham Staff Model Dental Practice before becoming a Partner Dentist in the Crabtree Mall Dental Practice.

b. Drs. Clifton Smith Cameron and Eric James Roman are the owners of the Hope Mills and Raeford Road PAs. Drs. Cameron and Roman intended to purchase minority interests in the Hope Mills and Raeford Road Dental Practices but did not complete those purchases because of disputes with the DCP Defendants.

39. On information and belief, the Dentist Defendants listed in paragraph 37 and 38 above have no ownership interest in the Staff Model Dental Practices or in the Staff Model LLCs.

JURISDICTION AND VENUE

40. This Court has jurisdiction over the Defendants pursuant to N.C. Gen. Stat. §§ 1-75.3 and 1-75.4.

41. Under N.C. Gen. Stat. §§ 90-40.1(a) and (c), the Dental Board has the authority to seek injunctive relief against the Defendants to enjoin the unlicensed practice of dentistry and aiding and abetting the unlicensed practice of dentistry.

42. The Practice PAs and Dentist Defendants are necessary parties pursuant to Rule 19 of the North Carolina Rules of Civil Procedure or, in the alternative, are proper parties pursuant to Rule 20 of the North Carolina Rules of Civil Procedure.

43. Venue is proper in Wake County, North Carolina, pursuant to N.C. Gen. Stat. §§ 1-79 (a)(1), 90-40.1(c) and 90-40.2(d).

FACTS

Background Regarding Dental Board Review of Management Arrangements

44. The Dental Practice Act provides that the practice of dentistry affects the public health, safety and welfare and is subject to regulation and control in the public interest. It declares as a matter of public interest and concern that "only qualified persons be permitted to practice dentistry in the State of North Carolina" and that the Act "shall be liberally construed to carry out these objects and purposes." N.C. Gen. Stat. § 90-22(a).

45. The Dental Practice Act proscribes the unlawful practice of dentistry. Specifically, N.C. Gen. Stat.§ 90-29(a) and (b) (11) provide that only licensed dentists may own,

manage, supervise, control or conduct an enterprise which is engaged in the practice of dentistry in North Carolina. The Act further states that the unlawful practice of dentistry "is hereby declared to be inimical both the public health and welfare and to constitute a public nuisance." N.C. Gen. Stat. § 90-40.1(a).

46. The Dental Practice Act also empowers the Dental Board "as an agency of this State, with full power and authority to enact rules and regulations governing the practice of dentistry within the State, provided that the rules and regulations are not inconsistent with the provisions of [the Dental Practice Act]." N.C. Gen. Stat. § 90-48.

47. In 2000, the Dental Board proposed a rule regarding management arrangements and interpreting N.C. Gen. Stat. § 90-29(b) (11). The rule, as amended, became effective April 1, 2001. The rule is codified in 21 NCAC 16X.0101 and is hereinafter referred to as the "Management Arrangement Rule" or "MAR."

48. The MAR provides that any management arrangement, contractual arrangement, stipulation or other binding instrument shall be in a writing that is signed by all parties, sets forth all material terms of the arrangement between or among the parties, describes the services to be provided and the time period, and sets forth the aggregate compensation to be paid under the management arrangement or the precise methodology for calculating this compensation. 21 NCAC 16X.0101(b)(1). The MAR also requires that the management arrangement be reviewed by the Dental Board. 21 NCAC 16X.0101(b)(2).

49. The Dental Practice Act defines management arrangement as: "Any one or more agreements or arrangements, alone or together, whether written or oral, between a management company and a dentist or professional entity whereby the management company provides services to assist in the development, promotion, delivery, financing, support, or administration

of the dentist or professional entity's dental practice." N.C. Gen. Stat. § 90-40.2(a)(3). The Act also defines the terms management company, professional entity, clinical, unlicensed person and ancillary personnel. *Id.* 90-40.2(a)(1 N.C. Gen. Stat. § 90-4)-(6).

50. In carrying out its statutory and regulatory duty, the Dental Board reviews each management arrangement submitted to it to determine if it complies with the Dental Practice Act and the MAR, including whether the management arrangement gives an unlicensed management entity legal or equitable ownership of, effective control over, or the ability to conduct or operate a dental practice.

51. After the MAR was adopted, five management companies, including Defendant DCP, filed suit against the Dental Board and others challenging the MAR on numerous constitutional and other grounds.

52. In November 2002, the North Carolina Court of Appeals issued a decision in the suit filed by DCP and other management companies which affirmed the lower court ruling dismissing the management companies' complaint and upheld the validity of the Management Arrangement Rule. See Affordable Care, Inc. v. Dental Board, 153 N.C. App. 527, 571 S.E.2d 52 (2002).

DCP Defendants' Deceptive Submission of Management Agreements for Dental Board Review

53. In November 2002, after losing its legal challenge to the MAR, DCP submitted to the Dental Board for review proposed Management Agreements for seven (7) different Dental Practices in North Carolina. The proposed Management Agreements submitted were between the Practice PAs and the related DCP Practice LLCs.

54. These agreements were submitted by the law firm Calfee, Halter & Griswold LLP ("CHG law firm') located in Cleveland, Ohio, near DCP's corporate offices.

55. Although these Management Agreements initially purported to be submitted on behalf of the involved dentist and Practice PAs, the CHG law firm later identified itself as counsel for DCP in submitting the final executed copies of these same Agreements and in all subsequent letters submitting other Management Agreements to the Dental Board for review.

56. The CHG law firm, as counsel for DCP, only submitted the Management Agreements and attachments to it. It did not submit any other agreements, contracts, or other documents to the Dental Board in connection with these seven Practices. The seven (7) Management Agreements submitted for review were all substantially the same in form and content.

57. The initial November 8, 2002 letter from DCP's counsel specifically noted that he was submitting the Management Agreements to the Board pursuant to the MAR. As noted above, the MAR requires disclosure of all material terms of the arrangement between or among the parties, including the aggregate compensation to be paid to the management company.

58. Article 26 of each Management Agreement submitted by DCP's counsel for review stated: "This Agreement and any exhibits hereto constitute the entire agreement between the parties and supersede any prior negotiations, underwritings or agreements."

59. Thus, through its counsel and by the explicit statements in the Management Agreements, DCP represented to the Board that it had disclosed the entire management arrangement between the dentist/PAs and DCP, including its related LLCs and other entities.

60. During 2002 and 2003, counsel for DCP and counsel for the Dental Board exchanged various communications, and DCP's counsel submitted amended versions of the Management Agreement for review by the Board.

61. At the end of this exchange, the Board sent a letter dated January 8, 2004 to DCP's law firm confirming that the seven amended Management Agreements complied with the Dental Practice Act and the MAR. *Complaint Ex. 1.* In the letter, the Dental Board reminded DCP that "[w]hen [DCP] and dentists enter into contracts, these contracts shall be submitted to the Board for review pursuant to the Rule," and that "it is the Board's position that all material terms of Dental Care Partners' agreement with a dentist will be reflected in the written contract(s) and the day-to-day operational aspects of the parties' relationship must conform to the written contract(s) as approved by the Board." *Complaint Ex. 1; see Terry W. Friddle, Dental Board's Deputy Operations Officer Aff. ¶¶ 3-7, 11 and 20.*

62. In issuing its January 8, 2004 letter, the Dental Board relied on the explicit assertions in the Management Agreements and DCP's attorney's implicit representation in submitting them pursuant to the MAR that the Board had been provided with all agreements or other documents setting forth all material terms of the arrangement between the dentists/PAs and DCP, including its related LLCs and other entities.

63. On May 21, 2004, the CHG law firm submitted a cover letter with copies of the final, executed Management Agreements, on behalf of its client, DCP, which letter is attached as *Complaint Ex. 2; see Friddle Aff. ¶¶ 3-7, 12 and 20.*

64. From 2006 to 2010 through the CHG law firm, DCP provided to the Dental Board for review Management Agreements related to at least 19 of the other North Carolina

Dental Practices. In each instance, DCP's attorney submitted for review only a Management Agreement and noted that it was doing so pursuant to the MAR or the "Dental Board rules."

65. Each Management Agreement DCP submitted for review contained the same Article 26 captioned "Entire Agreement" which stated: "This Agreement and any exhibits hereto constitute the entire agreement between the parties and supersede any prior negotiations, underwritings or agreements."

66. Thus, in its subsequent submissions through its counsel and by the explicit statements in the Management Agreements submitted, DCP repeatedly represented to the Dental Board that it had submitted the entire management arrangement between the dentists/PAs and DCP, including its related LLCs and other entities.

67. From 2006 to 2010, the Dental Board issued at least five more letters to DCP indicating that the Management Agreements submitted and reviewed complied with the Dental Practice Act and MAR (Compliance Letters).

68. In issuing these subsequent Compliance Letters, the Dental Board relied on the explicit assertions in the Management Agreements and the implicit representation in submitting them pursuant to the MAR that DCP had disclosed all agreements or other documents setting forth all material terms of the arrangement between the dentists/PAs and DCP, including the LLCs and any related entities.

69. In some of its subsequent compliance letters, the Dental Board reiterated the requirements of the MAR concerning submission of management arrangements: "As is apparent from the Rule, it is the Board's position that all material terms of Dental Care Partners' agreement with a dentist will be reflected in the written contract(s) and the day-to-day

operational aspects of the parties relationship must conform to the written contract(s) as approved by the Board." *Complaint Ex. 3; see Friddle Aff.* ¶¶ *3-7, 13 and 20.*

70. DCP never disclosed to the Dental Board any agreements, contracts or other documents, other than the Management Agreement and attachments, even after receiving letters from the Board confirming that all materials terms of the arrangements with a dentist and PA must be reflected in the agreement(s) submitted for review and that the Dental Practice operations must conform to the agreements submitted for review.

DCP Defendants' Concealment of the True, Unlawful Nature of its Contractual Arrangements with the NC Dental Practices was Recently Disclosed to Dental Board

71. In 2012, the Dental Board discovered that for ten years DCP had engaged in a pattern and practice of deliberately withholding agreements and concealing from the Dental Board the true nature of its relationship with the NC Dental Practices.

72. In 2012, all fourteen (14) of the Partner-Dentist Defendants who have an ownership in any of DCP's NC Dental Practices contacted the Dental Board through counsel.

73. The Partner-Dentist Defendants disclosed that DCP had submitted to the Dental Board only the Management Agreement and had withheld from the Dental Board numerous other aspects of the arrangements associated with their respective Dental Practices. Specifically, they informed the Board that DCP consistently had withheld an extensive and complex set of written contracts and agreements that DCP and its related entities had entered into with the Dentist Defendants/Practice PAs for the Dental Practices. None of these numerous other agreements, except the Management Agreement, were ever previously disclosed to the Dental Board.

74. These agreements that DCP repeatedly withheld and concealed from the Dental Board gave the DCP Defendants equitable ownership and effective control of the Dental Practices in violation of North Carolina law.

75. The Partner-Dentist Defendants represented that they only recently discovered that DCP had withheld from the Dental Board all of the other agreements associated with their respective Dental Practices. The Partner-Dentist Defendants also disclosed to the Board various other concerns that the DCP Defendants were operating the NC Dental Practices in violation of the Dental Practice Act and the MAR.

76. Upon request from the Dental Board, the Partner-Dentist Defendants provided the numerous undisclosed agreements along with other documentation and information about the operation of the NC Dental Practices. The affidavit of Dr. Eric Roman, which is filed in support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction ("TRO/PI Motion"), includes as exhibits a complete set of contractual arrangements between the parties. These exhibits are a representative example of the Contractual Arrangements used in all seventeen (17) of the Partner Model Dental Practices and, on information and belief, similar to the arrangements used in the ten (10) Staff Model Dental Practices.

DCP Defendants Intentionally Withheld Numerous Agreements from the Dental Board

77. In general, the arrangement with respect to the Partner Model Practices consisted of approximately 15 agreements and several other related documents, collectively referred to as the "Dental Practice Contractual Arrangements." The Partner Model Practices most often included the following agreements and related documents in the Contractual Arrangements:

a. **Contribution Agreement** between DCP and the Practice LLC whereby DCP contributes the assets to be used in the Dental Practice in exchange for all membership interest in the Practice LLC;

b. **LLC Membership Interest Purchase Agreement** whereby the Partner Dentist(s) purchases a minority interest in the Dental Practice through the Practice LLC;

c. **Promissory Note** between DCP and the Partner Dentist(s) whereby DCP finances a portion, generally 80%, of the purchase price of the minority interest in the Dental Practice through the Practice LLC;

d. **Pledge Agreement** whereby the Partner Dentist(s) pledges his or her minority interest in the Practice LLC to DCP to secure payment of the Promissory Note;

e. **Assignment and Assumption of Membership Interest** whereby DCP transfers a minority interest in the Dental Practice through the Practice LLC to the Partner Dentist(s);

f. **The Operating Agreement for the Practice LLC**, which sets forth many details of the relationship between DCP, DCP Equity, DCP's Practice LLC and the Dentist Defendant(s)/Practice PA regarding the operational aspects the Dental Practice and certain restrictive covenants;

g. **Amendment of the Employment Agreement** between the Dentist Defendant(s) and the Practice PA giving DCP, through the Practice LLC, the right to enforce certain restrictive covenants against the dentists as third-party beneficiaries;

h. **Management Agreement** between the Practice LLC and PA whereby the LLC agrees to provide various management services to the PA (THIS WAS THE ONLY AGREEMENT DISCLOSED TO DENTAL BOARD);

i. **Service Agreement** between DCP and the Practice LLC whereby DCP's Practice LLC "subcontracts" to DCP all or substantially all of its obligations to provide management services to the Practice PA;

j. **Financial Services Agreement between the Practice LLC and PA ("PA/LLC FSA")** whereby the Practice LLC contracts to provide to the Practice PA "financial services" that are related to the management services provided under the Management Agreement;

k. **Financial Services Agreement between DCP and Practice LLC ("DCP/LLC FSA")** whereby the Practice LLC "subcontracts" to DCP all or substantially all of the financial services it agrees to provide to the Practice PA;

l. **Sublease Agreement** by which DCP initially leases space needed for a Dental Practice and then subleases that space to the Practice LLC, which in turn subleases it to the Practice PA.

m. **Joinder Agreement** between DCP's lender, DCP and the Practice LLC that provides DCP's lender a lien on all of the Dental Practice assets that DCP contributed to the Dental Practice through the Practice LLC;

n. **Special Security Agreement** between DCP's lender, the Practice LLC, and the Practice PA that pledges all assets of the Practice PA as security for DCP's loan with its lender;

o. **Business Associate Agreements** between the Practice LLC, the Practice PA, DCP and DCP's lender regarding disclosure of protected health information under the Health Insurance Portability and Accountability Act ("HIPAA"); and

p. **Actions by Unanimous Written Consent** – DCP employees and officers are appointed to officer positions within the Practice PA and the Practice LLC. These DCP personnel also are given wide-ranging authority to act on behalf of the Practice PAs and the Practice LLCs. In these Actions, the Practice PA and LLC approve and ratify the Dental Practice Contractual Arrangements, among various other steps.

78. All or most of these of these agreements and other documents were implemented in the Partner Dentist Dental Practices and none but the Management Agreement was ever disclosed to the Dental Board.

79. Upon information and belief, many of these agreements were utilized in the Staff Model Dental Practices, including the Contribution Agreement, LLC Operating Agreement, Management Agreement, Service Agreement, LLC/PA Financial Services Agreement, DCP/LLC Financial Services Agreement, Sublease Agreement, Amendment of the Employment Agreement, Joinder Agreement, Special Security Agreements, Sublease Agreement, Business Associate Agreements and Actions by Unanimous Written Consent.

The Concealed Contractual Arrangements Demonstrate DCP Defendants' Illegal Establishment, Operation, Control and Ownership of NC Dental Practices

80. The Dental Practice Contractual Arrangements, including all the agreements never disclosed to the Dental Board, set forth the true nature of the DCP Defendants' relationship with the NC Dental Practices. They do not merely provide management services. Rather, the DCP Defendants establish, operate, effectively control and equitably own the NC Dental Practices.

81. DCP establishes each Dental Practice by purchasing all of its assets and contributing them to the Practice LLC in exchange for all the shares of the Practice LLC. This first step is accomplished through the **Contribution Agreement** so that DCP and DCP Equity initially own all the interest in the Practice LLC.

82. DCP sets up a Practice PA under the name of one or more dentist Defendants for each Practice. The Dental Practice operates under the name of the Practice PA to give the false appearance that the Practice is operating in compliance with the law.

83. In Partner Model Practices, DCP offers and sells to the Partner-Dentist Defendants a minority interest in the Dental Practice and a corresponding minority percentage of the Practice's profits by having the Partner Dentist purchase a minority interest in the Practice LLC as follows:

a. The Partner Dentist purchases a minority interest in the Practice LLC generally with a payment to DCP of 20% of the estimated value of the Dental Practice through the **LLC Membership Interest Purchase Agreement**;

b. The Partner Dentist signs a **Promissory Note** to DCP to finance the balance of the minority interest in the Dental Practice, after the down payment, with DCP deducting amounts due on the note from the Partner Dentist's distributions through the Practice LLC;

c. The Partner Dentist pledges his or her minority interest in the Practice LLC to DCP to secure payment of the Promissory Note through the **Pledge Agreement**; and

d. Once the Partner Dentist satisfies all the terms of the Purchase Agreement, DCP transfers a minority interest in the Practice LLC to the Partner Dentist through the **Assignment and Assumption of Membership Interest Agreement**.

84. The relationship between DCP, the Dentist Defendant(s), the Practice LLC and the Practice PA is governed in part through the **Operating Agreement for the Practice LLC**. The LLC Operating Agreement also sets forth the operational aspects of the Practice LLC, including distributions of the Dental Practice's profits through the Practice LLC, withdrawal from the LLC and the Dental Practice, and various restrictive covenants between the parties.

85. DCP drafted an **Amendment to Employment Agreement** between the Dentist Defendant(s) and Practice PA, which sets forth certain protections and restrictive covenants as to the dentists. These restrictive covenants include non-compete clauses and employee and patient non-solicitation provisions, and gives DCP, through the Practice LLC, the purported right to enforce those provisions against the dentists as a third-party beneficiary.

86. The Practice LLCs do not actually provide management or related financial services but are merely a vehicle or pass-through entity for the DCP Defendants to operate, manage, own and control the Dental Practices. The service aspect of the pass through is accomplished through the following four "service agreements," which all provide for charging a separate fee to the Dental Practices:

a. In the **Management Agreement** (Article 2), the Practice LLC agrees to provide certain management services to the Practice PA; in the corresponding **Service Agreement** (Article 1 and Section 2.1), DCP agrees to provide those same management services to the Practice LLC, and

b. In the **LLC/PA Financial Services Agreement** (Article 2), the LLC agrees to provide certain management-related financial services to the PA; in the corresponding **DCP/LLC Financial Services Agreement** (Article 1 and Section 2.1), DCP agrees to provide those same management-related financial services to the LLC.

87. DCP subleases certain space to the Practice LLCs for operation of the Dental Practices through the **Sublease Agreement**, which the LLC then leases to the Practice PA through the Management Agreement.

88. All the assets of each of the Dental Practices are pledged and secured for the benefit of DCP's lender to guarantee its loans to DCP through the **Joinder Agreement** and **Special Security Agreement**. Through these agreements, if DCP defaults on any of its loan obligations for Dental Practices across the nation, DCP's lender can dispose of all assets of the 27 NC Dental Practices, including all their lease rights, dental equipment, supplies, inventory, cash, accounts, computer equipment, and licenses, to satisfy DCP's loan obligations.

89. To comply with HIPAA requirements, the Practice LLC, the Practice PA, DCP and DCP's lender enter into various **Business Associate Agreements** to share certain protected health information.

90. Through documents prepared by DCP or its counsel, which are entitled **Written Action by Unanimous Written Consent,** DCP installs its officers and other personnel into officer positions within the Practice PAs and officer and director positions within the Practice LLCs and these officers and directors are given wide-ranging authority to act on behalf of the Practice PAs and LLCs. Through these same types of documents, the Practice LLCs and PAs ratify the various Dental Practice Contractual Arrangements prepared by DCP or its counsel at its direction.

DCP Defendants Intentionally Withheld Contractual Arrangements from Dental Board to Conceal Its Unlawful Ownership and Control of NC Dental Practices

91. After being contacted by the fourteen (14) Dentist Partner Defendants, the Dental Board conducted an investigation during which it procured substantial additional documentation

and evidence demonstrating the true nature and extent of DCP Defendants' equitable ownership, operation and effective control of the 27 NC Dental Practices and DCP's pattern of concealing this information from the Dental Board.

92. In general, these agreements and other documents, which were concealed from the Dental Board, demonstrate that DCP established its Practice LLCs to operate, equitably own, and effectively control each NC Dental Practice.

93. For example, the Practice LLCs own all the assets of the Dental Practices, act as a pass-through entity for the other DCP Defendants to own, operate, manage and control the NC Dental Practices, and receive and distribute to DCP at least a majority of each Dental Practice's profits. DCP Equity also owns a minority of each Dental Practice and receives a corresponding percentage of the profits from each Practice LLC.

94. The Practice PAs are shams that DCP created in the names of the Dentist Defendants to give the false and deceptive appearance that the Dental Practices are operating lawfully and in compliance with the Dental Practice Act and the MAR.

95. The Practice PAs are merely legal shells with no meaningful financial significance. The Practice PAs have no tangible assets, hold no cash, consistently earn little or no taxable income, make no distributions and have little or no retained earnings.

96. The ownership interests in these Practice PAs consistently have been transferred from one dentist to another for only nominal value, usually $10, because the Practice PAs do not own the Dental Practices and have no financial value.

97. The Practice PAs are mere legal facades through which dental services are billed and collected and clinical salaries are paid, after which the remaining Dental Practice revenues

are siphoned off by DCP's Practice LLCs. This structure permits the DCP Defendants to receive all or most of each NC Dental Practice's profits.

98. The undisclosed agreements the Board obtained through the Partner-Dentist Defendants demonstrate that DCP deliberately withheld and concealed them and knowingly and falsely represented that the Management Agreement was the entire agreement between the parties.

99. Some of the undisclosed agreements in the Partner Model Practices Contractual Arrangements contained "Entire Agreement" contractual provisions that specifically referenced the Management Agreement as only one part of the entire arrangement between the parties.

100. For example, the Entire Agreement provision in the Practice LLC Operating Agreements generally contained language indicating that the Operating Agreement, together with the Contribution Agreement, the Doctor's Membership Interest Purchase Agreement, the Service Agreement between DCP and the Practice LLC, the Management Services Agreement between the Practice LLC and the Practice PA and the Doctor's Employment Agreement with the Practice PA, contain the entire understanding between the parties and supersede any prior understandings or agreements between them respecting the subject matter. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Ex. 5(Fayetteville LLC Operating Agreement, Section 16.7).*

101. Additionally, the DCP/LLC Financial Services Agreement for at least some of the Dental Practices contained a similar Entire Agreement provision which indicated that the Agreement, together with Membership Interest Purchase Agreement between Partner Dentist and DCP, the Operating Agreement for the Practice LLC, the Management Services Agreement between the Practice LLC and PA, and the Assignment and Amendment of Doctor's Employment Agreement, constitute the entire agreement between the parties and supersede any

prior negotiations, underwritings or agreements. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Ex. 11 (Fayetteville Amended and Restated Financial Services Agreement Section 24).*

102. These "Entire Agreement" provisions in the undisclosed agreements in the Dental Practice Contractual Arrangements demonstrate that DCP knew and treated the Management Agreements as only one aspect of a much larger Contractual Arrangement between the dentists/PAs and DCP, including its Practice LLCs and related entities.

103. In contrast, as noted above, the Entire Agreement provision in the Management Agreements that were submitted to the Board referenced none of the other undisclosed agreements in the Dental Practice Contractual Arrangements and falsely represented that the Management Agreement represented the entire agreement between the parties.

104. The juxtaposition of the Entire Agreement provisions in the Management Agreements submitted to the Dental Board with those in the other agreements never disclosed to the Dental Board demonstrate and confirm that the DCP Defendants engaged in a pattern and practice of concealing from the Dental Board the true nature of their relationship by: (a) making knowing and intentional misrepresentations to the Dental Board that the Management Agreement was the entire arrangement with the Dentist Defendants and the Practice PAs, and (b) deliberately withholding from the Dental Board all the numerous other agreements in the Dental Practice Contractual Arrangements.

105. The DCP Defendants engaged in this pattern and practice over approximately 10 years to deceive the Dental Board into concluding that the arrangements complied with the Dental Practice Act and the MAR and into issuing the Compliance Letters discussed above.

106. On information and belief, the DCP Defendants then used these wrongfully-obtained Compliance Letters to support their false claims to some or all of the Dentist

Defendants that the entire arrangement had been submitted to and approved by the Dental Board, thereby enabling them to promote and open additional Dental Practices in North Carolina and to induce the Partner Dentists to purchase minority interests in some of its NC Dental Practices.

107. Because the Board issued the Compliance Letters based on the DCP Defendants' false representations that the Management Agreements submitted constituted the entire agreement between the parties and contained all material terms of its arrangement with the Dentist Defendants and Practice PAs, the Compliance Letters were void *ab initio*.

108. The DCP Defendants also engaged in this deceptive pattern and practice to conceal their establishment, operation, equitable ownership, and effective control of the 27 NC Dental Practices in violation of the Dental Practice Act and the MAR, as set forth below.

DCP Defendants Unlawfully Receive All or at least a Majority of NC Dental Practices' Profits

109. The Dental Practice Act and the MAR prohibit a management company or other non-licensed entity from receiving payments based on the profits or revenues of a dental practice. *21 NCAC 16X .0101 (c)(7) and (8); see also 1999 Attorney General ("AG") Opinion on Dental Care and Business Services under N.C. Gen. Stat. § 90-29(b)(11).*

110. The MAR specifically prohibits payments to a management company that will foreseeably increase or decrease because of the increase or decrease in profitability, gross revenues or net revenues of the dental practice. *21 NCAC 16X .0101(c)(7).*

111. The MAR also prohibits payments to a management company that are likely, foreseeably and purposely in excess of the likely profits of the professional entity. *21 NCAC 16X .0101(c)(8).*

112. Even in the Partner Model Dental Practices, DCP retains at least a majority ownership in all the Practice LLCs and the Dental Practices, and the DCP Defendants receive a majority of the profits from those Dental Practices through the Practice LLCs.

113. On information and belief, DCP and its related entities retain complete ownership of the ten (10) Staff Model Dental Practices through its complete ownership of the Practice LLCs for these ten (10) Dental Practices. The DCP Defendants receive all of the profits from the ten (10) Staff Model Dental Practices through the Practice LLCs.

114. The revenues and profits of the NC Dental Practices are diverted from the Practice PAs to the Practice LLCs and then distributed to DCP and DCP Equity through various provisions in the numerous agreements the DCP Defendants concealed from the Dental Board. On information and belief, the diversion of NC Dental Practice revenues and profits to the DCP Defendants through the Practice PAs and LLCs is done in an intentionally convoluted manner to mask the true nature of the transactions, as follows:

a. The LLC/PA Financial Services Agreements permit DCP to bill and collect for clinical dental services in the name of the Practice PAs. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Ex. 9(Section 2.3(a))*;

b. The DCP/LLC and the PA/LLC Financial Services Agreements contain provisions through which the Practice LLCs "purchase" the accounts receivable of the Practice PAs on a daily basis. *See, e.g., Id. Exs. 9 and 11 (Section 3.2 of PA/LLC FSA and Section 2.2 of DCP/LLC FSA)*;

c. The purchase of accounts receivable is purportedly offset by "fees" and reimbursements due to the Practice LLCs from the PAs. In fact, these "fees" are merely an accounting mechanism to conceal the diversion of the Dental Practice revenues from the Practice PAs to the LLCs. *See, e.g., Id.*;

d. As part of the fee arrangement for the PA/LLC Financial Services Agreements, the Practice PAs are required to "pay or reimburse" the Practice LLCs for any uncollectible accounts receivables that the Practice LLCs "purchased" from the Practice PAs. *See, e.g., Id. Ex. 9 (Schedule XV)*;

e. The effect of the purported "purchase and sale" of accounts receivables is to divert all of the Dental Practices' collectible accounts receivable from the Practice PAs to the Practice LLCs and use the purported fees and reimbursements to the Practice LLCs to conceal the diversion of the Dental Practices' revenues and profits from the Practice PAs;

f. DCP causes payments to be made on behalf of the Practice PAs for the salaries of clinical staff from these diverted revenues of the Dental Practices;

g. DCP pays all other expenses of the Dental Practices through the Practice LLCs with the other diverted revenues of the Dental Practice;

h. The remaining revenues or the profits of the NC Dental Practices are distributed to the owners of the Practice LLCs according to the percentage of ownership in those LLCs;

i. The Staff Model LLCs are entirely owned by the DCP Defendants. The Partner Model LLCs are majority owned by DCP and DCP Equity; and

j. Through this structure, resulting in diversion of Dental Practice revenues and distributions to the Practice LLCs' owners, the DCP Defendants receive all of the ten (10) Staff Model Dental Practices' profits and a majority of the seventeen (17) Partner Model Dental Practices' profits.

115. The DCP Defendants' receipt of at least a majority of all twenty-seven (27) NC Dental Practices' profits violates the Dental Practice Act and MAR.

DCP Defendants Charge Four Separate and Illegal "Fees" that are based on the NC Dental Practices' Revenues and Profits

116. As part of the DCP Defendants' effort to conceal its diversion and receipt of all the Dental Practices' revenues and profits, the Contractual Arrangements include four separate service agreements that purportedly authorize DCP or Dental One and the Practice LLCs to charge four very substantial and separate monthly fees to the Practice PAs or the Dental Practices for the same management and related financial services. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Exs. 8-11; Dr. Aguero Aff. ¶¶ 26-28, Exs. 2-5; Dr. Alston Aff. ¶ 25, Exs. 3-6; Dr. Ghodke Aff. ¶ 23, Exs. 4-7; Dr. Johal Aff. ¶¶ 35-38, Exs. 3-6; Dr. Patel Aff. ¶¶ 23-24, Exs. 3-6;*

Dr. Smith Aff. ¶¶ *32-33, Exs. 1-4.*

117. First, the Management Agreements between the Practice LLCs and PAs provide that the Practice LLCs will charge the Practice PAs a monthly management fee of up to $85,000, plus incurred expenses.

118. The Practice LLCs also can change the amount of the management fee on a quarterly basis.

119. Second, in the Service Agreements between DCP and the Practice LLCs, DCP charged the Practice LLCs an "Overhead Allocation" fee or amount for providing those same management services to the Practice LLCs.

120. The Overhead Allocation fees in the Service Agreements are calculated as a percentage of collections.

121. The percentage varies somewhat among the Dental Practices but is as much as 7.5% of collections.

122. The term "collections" is defined in the Service Agreements as the amount received by each Practice LLC and PA for all services and other goods, procedures or appliances provided by the Practice PA.

123. The term "collections" is equivalent to the gross revenues of the Dental Practice.

124. This Overhead Allocation fee or amount in the Service Agreements is in addition to the "monthly management fee" charged by the Practice LLCs to the Practice PAs in their corresponding Management Agreement for providing these same management services.

125. Third, the PA/LLC Financial Services Agreements provide that the Practice LLCs will charge a "Financial Services Fee" to the Practice PAs for management-related financial

services. This Financial Services Fee set forth in the Agreements was as much as $45,000.00 per month per Dental Practice plus incurred expenses.

126. The Practice LLCs also can change the amount of the monthly Financial Services Fee on a quarterly basis.

127. Fourth, in the DCP/LLC Financial Services Agreements, DCP charges the Practice LLCs a "Financial Services" or "Overhead Percentage" fee.

128. The "Financial Services" or "Overhead Percentage" fee in the DCP/LLC Financial Services Agreement also is calculated as a percentage of "collections."

129. The percentage varies somewhat among the Dental Practices but the Financial Services" or "Overhead Percentage" fee is as much as 10% of collections.

130. The term "collections" is defined in the DCP/LLC Financial Services Agreements in the same manner as in the Service Agreement -- as the amount received by each Practice LLC and PA for all services and other goods, procedures or appliances provided by the Practice PA.

131. The term "collections" in the DCP/LLC Financial Services Agreements also is equivalent to the gross revenues of the Dental Practices.

132. The "Financial Services" or "Overhead Percentage" fee charged by DCP to the Practice LLCs is in addition to the monthly "Financial Services Fee" provided for in the PA/LLC Financial Services Agreement for providing these same management-related financial services.

133. For each of the twenty-seven (27) NC Dental Practices, the Contractual Arrangements provide for two monthly fees of up to $130,000 plus two Overhead Allocation/Percentage fees of up to a collective 10% of the Dental Practices' collections or revenues. *See, e.g., TRO/PI Motion, Dr. Johal Aff., Exs. 3-6.*

134. The purported fees that the Practice LLCs charged the Practice PAs for the management services and the related financial services often differed significantly from the fees or amounts that DCP or Dental One charged the Practice LLCs for providing these same management related services. Additionally, DCP and its Practice LLCs changed all these fees periodically. The changing nature of the fees and the vast discrepancies between the amounts charged by DCP and the Practice LLCs for purportedly providing the same services demonstrates that the LLC "fees" were not related to the services provided. Rather, the Practice LLC management and financial services fees were designed to conceal the diversion of Dental Practice revenues from the Practice PAs to the LLCs.

DCP Defendants Use Duplicative Layers of Changing Fees
to Conceal Their Illegal Diversion of NC Dental Practices' Revenues and Profits

135. In these four service agreements, all of the services the Practice LLCs contracted to provide to the Practice PAs are "subcontracted" to DCP or Dental One to actually provide those services to the NC Dental Practices.

136. Specifically, the management services that the Practice LLCs contracted to provide to the Practice PAs in the Management Agreements are "subcontracted" in the Service Agreements between DCP or Dental One and the Practice LLCs so that the services are actually provided by DCP or Dental One to the NC Dental Practices.

137. Similarly, the management-related financial services that the Practice LLCs contracted to provide to the Practice PAs in their Financial Services Agreement are "subcontracted" in the Financial Services Agreement between DCP or Dental One and the

Practice LLCs so that those same services are actually provided by DCP or Dental One to the NC Dental Practices.

138. Thus the Management Agreements and Financial Services Agreements between the Practice LLCs and Practice PAs are merely "pass through" agreements that add a duplicative layer of two separate purported fees to each of the NC Dental Practices.

139. On information and belief, the DCP Defendants designed and implemented the duplicative, layered structure of these four service agreements, corresponding fee arrangements, and the regular changing of the fees for two purposes. First, the monthly Management Fees or Financial Service Fees are an accounting mechanism the DCP Defendants designed to conceal their diversion of the NC Dental Practices' revenues from the Practice PAs to the Practice LLCs and the distribution of at least a majority of all the NC Dental Practices' profits to the DCP Defendants. Second, DCP or Dental One also receives payments through the Practice LLCs for management related services that are based on the NC Dental Practices' collections or revenues.

140. As noted above, the MAR also specifically prohibits payments to a management company based on the increase or decrease in profitability, gross revenues or net revenues of the dental practice. *21 NCAC 16X .0101(c)(7).*

141. Under these undisclosed Agreements, DCP receives "Overhead Allocation," "Overhead Percentage" or "Financial Services" fees for each of the NC Dental Practices, which fees are based directly on the gross revenues of the Dental Practices. These combined Overhead Allocation and Financial Services fees to DCP can be as much as a combined 10% of the total collections or gross revenues of the Dental Practices.

142. The "overhead" fees paid to DCP or Dental One, which are based on the gross revenues of each of the 27 NC Dental Practices, violate the Dental Practice Act and MAR.

143. Additionally, the purported management and financial services fees from the Practice PAs to the LLCs violate the Dental Practice Act and the MAR because they also are based on the NC Dental Practices' gross revenues and profits, not on the services provided. These Practice LLC fees were designed and have the effect of concealing the DCP Defendants' diversion of the NC Dental Practices' revenues away from the Practice PAs to the Practice LLCs and then distributing at least a majority of the NC Dental Practices' profits to the DCP Defendants through the Practice LLCs.

DCP Defendants Unlawfully Concealed from the Dental Board Three of the Service Agreements and the Corresponding "Fees"

144. The DCP Defendants intentionally withheld from the Dental Board the Service Agreements between DCP and the Practice LLCs, the PA/LLC Financial Services Agreements, and the DCP/LLC Financial Services Agreements and the corresponding separate fees or purported fees for each of the NC Dental Practices.

145. The MAR requires that the written agreement(s) submitted to the Board for review "set[] forth all the material terms of the arrangement between or among the parties thereto" and "set[] forth the aggregate compensation to be paid under the management arrangements" or the precise methodology for calculating it. *21 NCAC 16X .0101(b)(1)(B) and (D).*

146. DCP's withholding and concealment of these undisclosed agreements, material terms of the arrangements and the corresponding fees and payments for each of the 27 NC Dental Practices violates 21 NCAC 16X .0101(b)(1) (B) and (D).

DCP Defendants Maintain Two Sets of Inconsistent Financial Records that Demonstrate Their Unlawful Ownership and Control of the NC Dental Practices

147. Financial records for each NC Dental Practice are prepared by or at the direction of the DCP Defendants. These financial records demonstrate the DCP Defendants' operation, equitable ownership and effective control of the NC Dental Practices.

148. The DCP Defendants maintain two sets of financial records for each NC Dental Practice. The first set includes a series of documents used for internal purposes and which are provided to the Partner-Dentist Defendants ("Internal Financials"). The second set is used for external purposes, including federal and state tax returns filed with the IRS and North Carolina Department of Revenue ("External Financials").

149. The Internal Financials provided to each Partner-Dentist Defendant include, among other documents, a monthly profit and loss statement and a quarterly "LLC Profit Distribution Proposal Summary." The Internal Financials treat the Practice PA and Practice LLC as part of one consolidated operational entity for each NC Dental Practice.

150. The External Financials for each Dental Practice separate the financial operations of the Practice LLC and the Practice PA for each NC Dental Practice, and separate tax returns for the Practice LLC and for the Practice PA are filed by the DCP Defendants or at their direction. These tax returns treat the Practice LLCs and PAs as if they were separate operational entities, in contradiction to the Internal Financials.

151. Copies of Internal Financials and External Financials provided by the DCP Defendants to the Partner-Dentist Defendants are attached as exhibits to their affidavits that are filed with the Motion for TRO and Preliminary Injunction. *See, e.g., TRO/PI Motion, Dr. Aguero Aff., Exs. 1 and 6A-11B; Dr. Alston Aff., Exs. 8-11B; Dr. Cameron Aff., Exs. 1-7; Dr.*

Dunning Aff., Exs. 2A-10B; Dr. Ghodke Aff., Exs. 8-11; Dr. Patel Aff., Exs. 8A-12B; Dr. Silvoy Aff., Exs. 1-3 and 5-9; Dr. Smith Aff., Exs. 7-14A; Dr. Ybanez Aff., Exs. 1-3.

152. The Internal Financials and External Financials both demonstrate that the DCP Defendants equitably own the NC Dental Practices, including as follows:

a. The Practice PAs earned little or no taxable income, make few or no distributions and have little or no retained earnings for each of the NC Dental Practices;

b. The profits and earnings from the NC Dental Practices are distributed through the Practice LLCs and not the Practice PAs;

c. The Partner Model Dental Practices' profits are allocated between DCP, DCP Equity and the Partner-Dentist Defendants in proportion to their respective ownership interests in the Practice LLCs;

d. The Practice PAs have no cash and no other tangible assets;

e. All or substantially all of the net worth and assets associated with each NC Dental Practice is held and owned by the Practice LLCs and not by the Practice PAs; and

f. Substantially all of the cash assets generated by each Dental Practice are diverted initially to each Practice LLC and then to DCP.

DCP Defendants' Improper Control over NC Dental Practices through Termination Clauses and Related Provisions in Contractual Arrangements Threatens Continuity of Care for Thousands of NC Dental Patients

153. Various provisions in the Dental Practice Contractual Arrangements collectively give DCP the potential authority to terminate certain agreements with the Dentist Defendants/Practice PAs without cause, on short notice and effectively allow DCP to strip the Dentist Defendants of the practical ability to continue treating their patients. These provisions, if enforced and upheld, threaten the continuity of dental care for thousands of patients in 27 Dental Practices across North Carolina. On information and belief, DCP intentionally included these provisions in various different agreements, rather than in one single agreement, at least in part to make the collective effect of these provisions convoluted and difficult to decipher.

154. For example, both the Management Agreements and the PA/LLC Financial Service Agreements appear to allow the Practice LLCs to terminate the agreements at any time without cause by providing the Practice PAs thirty (30) days' advance written notice. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Exs. 8-9, (Management Agreement, Sections 7.4, 8.1; PA/LLC FSA, Sections 7.4, 8.1.*

155. Termination of these Agreements, including a termination without cause and with only thirty (30) days' notice, triggers numerous consequences, including that:

a. "PA shall immediately cease to operate the Practice pursuant to this Agreement and PA and its employees will vacate the premises and office facility on a timely basis."

b. "In the event that any inventory, supplies and equipment of the Practice or other LLC assets are in the possession of PA or any shareholder, dentist or PA clinical employee, PA shall return all such items immediately to the LLC . . ."

See, e.g., TRO/PI Motion, Dr. Roman Aff., Exs. 8-9.

156. Other agreements and documents in the Dental Practice Contractual Arrangements, never disclosed to the Dental Board, demonstrate that DCP, through its Practice LLCs, owns or leases all the assets necessary to operate the Dental Practices, including the lease for the office, all dental and office equipment, supplies, tools, contracts, accounts receivables, among numerous others. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Ex. 12 (Contribution Agreement, Recital 1).* As noted in some of these Agreements, the LLC owns all the Practice Assets, defined as "all of the assets which are used to operate the business of DCP with respect to the Practices . . . ." *See, e.g., Id. (Sections 5.7 and 5.8).*

157. Thus, if the above contractual provisions are enforced and upheld, DCP could force the Dentist Defendants/Practice PAs to vacate the premises and return all assets necessary to operate the Dental Practice with only 30 days' notice and without any cause.

158. In the LLC Operating Agreements, DCP has the right to purchase the Partner Dentists' interest in the Practice LLC without cause, among various others reasons. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Ex. 5 (LLC Operating Agreement, Section 9.5).*

159. The LLC Operating Agreements, which were drafted by DCP or at its direction, also contain:

a. non-compete provisions prohibiting the Partner Dentists from owning or possessing any interest in any business or activity that competes with the Practice PAs or LLCs, which would include any other dental practice, for one year after ceasing to be a member in the Practice LLC. *See, e.g., Id. (Section 10.1(b))*;

b. non-solicitation provisions prohibiting Partner Dentists from soliciting or employing any employees of the Practice PAs or LLCs for 12 months after ceasing to be a member in the Practice LLC without prior written consent of DCP. *See, e.g., Id. (Section 10.3(b))*; and

c. provisions granting the Practice LLCs the right to enforce (as a third-party beneficiary) any and all restrictive covenants contained in employment agreements with the Practice PAs' clinical employees. *See, e.g., Id. (Section 10.8(b)).*

160. These non-compete and non-solicitation provisions, if enforced and upheld, would prohibit the Dentist Defendants from establishing or owning any other dental practice or, without DCP's written consent, soliciting any of the employees who worked in the Dental Practice for one year after their Practice LLC membership interests ceases, including if DCP purchases the Dentist Defendants' interests without cause.

161. The NC Attorney General has opined that restrictive covenants limiting the ability of dentists to practice dentistry in competition with a management company or other entity demonstrates improper control pursuant to N.C. Gen. Stat. § 90-29(a) and (b)(11). *1999 AG Opinion on Dental Care and Business Services under N.C. Gen. Stat. § 90-29(b)(11).*

162. At least some of the employment agreements between the Dentist Defendants and Practice PAs contained a provision prohibiting a departing dentist from owning or being

employed by a dental practice within a certain geographic area for up to a year after termination. Some of these agreements and provisions also purported to prohibit departing dentists from contacting or soliciting any patients of the Dental Practice for 12 months. On information and belief, these employment agreements were drafted by DCP or at its direction for use by the Practice PAs.

163. Under the LLC Operating Agreement provision noted above, DCP purportedly has the right to enforce provisions of the employment agreements if it decides for any reason to purchase the Dentist's Practice LLC interest.

164. The Amendment of Employment Agreement for at least some of the Dental Practices requires the Partner Dentist to resign as an officer and employee of his or her Practice PA if the Partner Dentist violates the LLC Operating Agreement or if the Partner Dentist's membership interest in the Practice LLC is purchased. *See, e.g., TRO/PI Motion, Dr. Lindsey Aff., Ex. 3, Section 3(b).* The Amendment further provides the Practice LLC the right to enforce, as an intended third-party beneficiary, any provision of the Amendments to the Employment Agreement, including requiring the Partner Dentists' resignation from the Practice PA. *See, e.g., TRO/PI Motion, Dr. Lindsey Aff., Ex. 3, Section 4; Dr. Roman Aff., Ex. 17, Section 4.*

165. As noted above, the LLC Operating Agreements give DCP the right to purchase the Partner Dentists' interest without cause, among various others reasons. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Ex. 5 (LLC Operating Agreements Section 9.5).* DCP's purchase of the Partner Dentists' interest in the Practice LLCs triggers the obligation to resign from the Practice PAs in the Amendments to the Employment Agreement, as noted above, and purports to give DCP, through the Practice LLC, the right to enforce this compelled resignation.

166. Thus, the provisions of the Employment Agreements and Amendments thereto, when combined with certain provisions of the LLC Operating Agreements, effectively allow DCP, as the majority owner of the Practice LLCs, to force the compelled resignation of the Partner Dentists from the Practice PAs, which they own, and to enforce the corresponding non-compete provision and the provision prohibiting solicitation of patients of the Dental Practices. DCP can trigger these provisions simply by exercising its option to purchase the Partner Dentists' interest in the Practice LLCs without any cause.

167. Some earlier versions of the agreements DCP concealed from the Dental Board contain provisions which gave DCP the purported right to compel the Dentist Defendants to sell their interests in the Practice PAs in a more direct manner.

168. For example, some of the Membership Interest Purchase Agreements executed by the Partner-Dentist Defendants contain provisions requiring the Partner Dentist to agree that s/he will transfer his or her shares in the Practice PA to one or more licensed dentists as directed by DCP within 5 days of written notice from DCP. *See, e.g., TRO/PI Motion, Dr. Ghodke Aff., Ex. 3 (Section 5.13(a)).*

169. Additionally, the original Operating Agreement for DCP of Greensboro, LLC contained a provision requiring the Dentist Partner to sell his/her shares in the Practice PA to a licensed dentist, as directed by DCP, free and clear of all liens for the amount of $10, if DCP exercised its right to unilaterally acquire the Partner Dentist's membership interest in the Practice LLC. *See, e.g., TRO/PI Motion, Dr. Aguero Aff., Ex. 12* (Section 10.8(c)(2)).

170. The MAR explicitly prohibits a management arrangement which permits "direct or indirect control over the transfer of ownership interests in the professional entity by a management company or other non-professional entity including, without limitation, any

agreement or arrangement limiting or requiring in whole or in part the transfer of ownership interests in a professional entity." *21 NCAC 16X .0101(c)(6).*

171. Upon information and belief, the DCP Defendants deleted this earlier provision in later versions of its LLC Operating Agreements and Section 5.13(a) in the Membership Interest Purchase Agreements, in apparent recognition of this prohibition. However, the DCP Defendants then effectively accomplished the same control over transfer of the PA ownership interests in an intentionally more convoluted manner. Instead of accomplishing control of the transfer of the Dentist Defendants' interests in the Practice PAs through a single provision, DCP did so through several provisions in different but related agreements in the Contractual Arrangements as noted in paragraphs 158 to 166 above. The DCP Defendants concealed the agreements containing these provisions from the Dental Board.

172. The collective effect of the provisions in these various Agreements in the Dental Practice Contractual Arrangements, if enforced and upheld, is to authorize the DCP Defendants either directly or indirectly to: (1) terminate the Financial Services and Management Agreements without cause and with only 30 days' notice and thereby force the Dentist Defendants out of the building and to surrender all dental equipment, tools, supplies, and all other assets necessary to operate the Dental Practice; (2) prohibit the Dentist Defendants from owning or operating a dental practice for one year after termination; (3) prohibit the Dentist Defendants from soliciting any patients of the NC Dental Practices after termination of an employment agreement; (4) prohibit the Dentist Defendants from soliciting or hiring any of the personnel working in the NC Dental Practices; (5) force the Dentist Defendants out of the Practice LLCs; and (6) compel their resignation from the Practice PAs, at least for certain NC Dental Practices.

173. The collective effect of these provisions in the various Dental Practice Contractual Arrangements, if enforced and upheld, would permit DCP to force the Dentist Defendants out of the NC Dental Practices with no realistic way to continue treating their patients, which in turn would jeopardize the continuity of care for thousands of patients in the 27 Dental Practices across North Carolina.

174. The collective effect of the termination provisions demonstrates the DCP Defendants' control and ownership of the NC Dental Practices. If the Dentist Defendants were actually in control and owned the NC Dental Practices, it would be nonsensical to have provisions compelling them to resign from and leave their own Dental Practices and, upon termination, prohibiting them from competing with, hiring the employees of, and soliciting any patients of their own Dental Practices. The existence of these termination provisions and the DCP Defendants' purported right to enforce them demonstrate that the DCP Defendants effectively control and are the equitable owners of the NC Dental Practices.

DCP Defendants Unlawfully Control and Own the NC Dental Practices through Appointment of Their Officers and Employees to Practice PA and LLC Positions

175. DCP also equitably owns, operates and exercises effective control over the NC Dental Practices in other various respects.

176. For example, DCP and Dental One employees and officers consistently are appointed to officer positions within the Practice PAs and are given wide-ranging authority to take actions on behalf of the Practice PAs, including signing and filing tax returns, reports and other documents with government agencies, among many other responsibilities. The appointment of DCP and Dental One personnel as officers of the Practice PAs is accomplished through documents prepared by the DCP Defendants or their counsel, which documents are

entitled, "Written Action by Unanimous Written Consent" or similar designation. *See, e.g., TRO/PI Motion, Dr. Roman Aff., Exs. 21-24.*

177. DCP and Dental One personnel appointed as the Practice PAs' officers repeatedly take actions on behalf of the Practice PAs, often without the knowledge of the Dentist Defendants. For example, on information and belief, through these personnel, DCP and Dental One have had tax returns prepared and filed for the Practice PAs with the state and federal government without any input from, knowledge of and without even providing a copy to the Partner-Dentist Defendants. *See, e.g., TRO/PI Motion, Dr. Aguero Aff. ¶¶ 24-25 and 38; Dr. Alston Aff. ¶ 50; Dr. Cameron Aff. ¶ 29; Dr. Dunning Aff. ¶ 33; Dr. Ghodke Aff. ¶ 32; Hughes Aff. ¶ 17; Dr. Johal Aff. ¶ 54; Dr. Lindsey Aff. ¶ 23; Dr. Patel Aff. ¶ 50; Dr. Roman Aff. ¶ 45; Dr. Silvoy Aff. ¶ 53; Dr. Smith Aff. ¶¶ 85-86; Dr. Ybanez Aff. ¶¶ 38-39.*

DCP Defendants Repeatedly Admit Ownership and Control of NC Dental Practices

Partnership Marketing Materials: Repeated Admissions of Ownership

178. The true nature of the DCP Defendants' relationship with the NC Dental Practices is revealed in a series of marketing materials and solicitations that DCP gave to many or all of the Partner-Dentist Defendants to solicit them to buy a minority interest in the Dental Practice that DCP was already operating or was planning to open ("DCP Partnership Marketing Materials").

179. DCP provided substantially similar versions of its Partnership Marketing Materials to various Partner-Dentist Defendants. *See, e.g., TRO/PI Motion, Dr. Aguero Aff. ¶ 7, Ex. 1; see also Dr. Alston Aff. ¶ 8, Ex. 1; Dr. Dunning Aff. ¶ 9, Ex. 1A; Dr. Ghodke Aff. ¶ 11, Ex. 1*; Dr. *Hughes Aff. ¶ 7, Ex. 1; Dr. Patel Aff. ¶ 4, Ex. 1; Dr. Silvoy Aff. ¶ 11, Ex. A.*

180. The Dental Board first received DCP's Partnership Marketing Materials in 2012 from the Partner-Dentist Defendants after they contacted the Board.

181. These Partnership Marketing Materials confirm the structure and true nature of the DCP Defendants' arrangement with the NC Dental Practices. Throughout the Partnership Marketing Materials, DCP makes numerous admissions that it owns, operates and controls the NC Dental Practices.

182. For example, the Partnership Marketing Materials DCP provided to the Partner-Dentist Defendants contained the following statements and admissions, among numerous others:

a. DCP operates dental practices concentrated in major metropolitan areas, including DentalWorks practices in North Carolina;

b. DCP owns and operates its dental practices through LLCs and some of those practices permit dentists to own a minority interest in them of up to 35%;

c. Those dentists with minority interests participate in equity ownership and share in the profits of DCP's dental practices;

d. Through its dental practices, DCP offers a full range of general and specialty dental services; and

e. DCP charges these dental practices a fee tied to net their revenues for management services.

See, e.g., TRO/PI Motion, Dr. Aguero Aff. ¶ 7, Ex. 1 (pp. 58 and 70); Dr. Patel Aff., Ex. 1 (pp. 3 and 6); see also Dr. Alston Aff. ¶ 8, Ex. 1; Dr. Dunning Aff. ¶ 9, Ex. 1A; Dr. Ghodke Aff. ¶ 11, Ex. 1; Dr. Hughes Aff. ¶ 7, Ex. 1.

183. DCP's Partnership Marketing Materials provided to the Partner-Dentist Defendants to induce them to purchase a minority interest in the Dental Practices demonstrate that the NC Dental Practices are owned, operated and controlled by the DCP Defendants.

184. The Dental Practice Contractual Arrangements that DCP provided to the Partner-Dentist Defendants in North Carolina to effectuate the purchase of their minority interest are

generally consistent with the admissions and representations made in its Partnership Marketing Materials and confirm the DCP Defendants' ownership, operation and control of the Dental Practices.

In Numerous Government Filings, DCP Defendants Repeatedly Represent that they Own and Operate the NC Dental Practices

185. In various reports, tax returns and other documents, the DCP Defendants repeatedly have represented to government agencies and others that the Practice LLCs are engaged in the business of a dental practice, not a management company.

186. For example, in mandatory Annual Reports filed with the NC Secretary of State's Office, DCP and Dental One officers and employees have repeatedly represented to that office and the public that the Practice LLCs are dental practices, not management companies. Examples of these annual reports are attached. *Complaint Exhibits 4A-4X; see Casie S. Goode, Dental Board's Assistant Director of Investigations Aff. ¶¶ 3-8.*

187. Additionally, in the Practice LLC federal tax returns, DCP and Dental One officers and employees have attested under penalty of perjury that the Practice LLCs are dental practices, not management companies. *See, e.g., TRO/PI Motion, Dr. Aguero Aff., Exs. 9B-11B; Dr. Alston Aff., Ex. 11B; Dr. Cameron Aff., Ex. 5; Dr. Dunning Aff., Exs. 5B-10B; Dr. Ghodke Aff., Ex. 9; Dr. Patel Aff., Exs. 11B-12B; Dr. Silvoy Aff., Ex. 9; Dr. Smith Aff., Exs. 11B-12B; Dr. Ybanez Aff., Ex. 3.*

188. On information and belief, DCP and Dental One officers and employees have represented to the federal government that the Practice PAs are subsidiaries of DCP and Dental One's trade name, DentalOne Partners. DCP and Dental One have made these representations to obtain National Provider Identifier numbers, which are essential to allow the Practice PAs to bill

government programs and insurance companies for dental services. Examples of this information, which is publicly available on the Internet through HIPAASpace, are attached. *Complaint Exs. 5A- 5J; see Goode Aff. ¶¶ 3-4 and 9-11.*

DCP Defendants' Illegal Control Over Clinical Aspects of NC Dental Practices

189. The Dental Practice Act and the Management Arrangements Rule prohibit:

a. "direct or indirect ownership of, or control over clinical aspects of, the dental business of a dentist or professional entity by a management company,"

b. "direct or indirect control over, or input into, the clinical practices of the professional entity or its dentist or ancillary personnel by a management company,"

c. "direct or indirect control over the hiring and firing of clinical personnel or material terms of clinical personnel's relationship with the dentist or professional entity by a management company or a related person," and

d. "authority in the management company to enter into or approve any contract or other arrangement, or material terms of such contract or arrangement, between the professional entity and a dentist for the provision of dental services or the requirement that the management company or related person approve or give input into such contract or arrangement. "

See N.C. Gen. Stat. § 90-29(a) and (b)(11) and 21 NCAC 16X .0101 (c)(1), (3), (4) and (5).

190. As set forth below, the DCP Defendants have direct or indirect control over and input into clinical aspects of the NC Dental Practices in violation of the above North Carolina laws.

DCP Defendants' Aggressive Promotion of Unnecessary Treatment and Unwarranted Billing of Dental Patients in North Carolina

191. Over the years, DCP and Dental One have received investments from groups of venture capital and equity investors. On information and belief, after investments by MSD

Capital L.P in 2007 and 2008, the DCP Defendants began a very aggressive and coordinated campaign to push certain clinical procedures and drugs specifically to increase revenues and profits at their NC Dental Practices.

192. The DCP Defendants developed and implemented a multi-prong strategy to push the dentists in the NC Dental Practices to aggressively diagnose and treat periodontal (gum) disease through a procedure called scaling and root planing ("SRP") and by prescribing a drug marketed as Arestin that is used for treatment of periodontal disease. On information and belief, the DCP Defendants coordinated this campaign with representatives of the manufacturer of Arestin.

193. For example, the DCP Defendants developed and distributed to dentists in the NC Dental Practices protocols for diagnosing periodontal disease, and treating it by performing SRP and using Arestin on patients (hereafter "Periodontal Treatment Protocols"). DCP directed its Regional Clinical Advisors and others to distribute the Periodontal Treatment Protocols and to recommend that treatment to the dentists in its NC Dental Practices. *See, e.g., TRO/PI Motion, Dr. Aguero Aff. ¶¶ 67-73; Dr. Alston Aff. ¶¶ 73-77; Dr. Curley Aff. ¶¶ 16-19; Dr. Ghodke Aff. ¶¶ 43-51; Dr. Hughes Aff. ¶¶ 22-37, Exs. 2-3; Dr. Patel Aff. ¶¶ 66-70; Dr. Silvoy Aff. ¶ 68; Dr. Smith Aff. ¶¶ 106-113; Dr. Ybanez Aff. ¶¶ 45-48; Dr. Lindsey Aff. ¶¶ 38-43.* The Periodontal Treatment Protocols are inconsistent with the standard of care in North Carolina for diagnosing and treating periodontal disease in numerous respects.

194. Personnel of the DCP Defendants also made in-person visits to the NC Dental Practices, primarily through Regional Clinical Advisors, to aggressively promote performing SRP and using Arestin on patients. These Regional Clinical Advisors referenced the Periodontal Treatment Protocols and also specifically instructed dentists and hygienists who worked at the

NC Dental Practices about the DCP Defendants' expectations concerning performing SRP and using Arestin on patients. *See, e.g., TRO/PI Motion, Dr. Aguero Aff. ¶¶ 67-73; Dr. Alston Aff. ¶¶ 73-77; Dr. Curley Aff. ¶¶ 16-19; Dr. Ghodke Aff. ¶¶ 43-51; Dr. Hughes Aff. ¶¶ 22-37, Exs. 2-3; Dr. Patel Aff. ¶¶ 66-70; Dr. Silvoy Aff. ¶ 68; Dr. Smith Aff. ¶¶ 106-113; Dr. Ybanez Aff. ¶¶ 45-48; Dr. Lindsey Aff. ¶¶ 38-43.*

195. Representatives from the manufacturer of Arestin also made frequent visits to the NC Dental Practices to aggressively promote diagnosing periodontal disease, performing SRP procedures and using Arestin. When visiting the offices, the representatives often had statistics about the percentage of patients in that particular NC Dental Practice who had been diagnosed with and treated for periodontal disease and also statistics concerning the purported percentage of the general population with periodontal disease. Some of these visits were done in conjunction with visits by DCP's Regional Clinical Advisors. *See e.g., TRO/PI Motion, Dr. Aguero Aff. ¶¶ 67-73; Dr. Alston Aff. ¶¶ 73-77; Dr. Curley Aff. ¶¶ 16-19; Dr. Ghodke Aff. ¶¶ 43-51; Dr. Hughes Aff. ¶¶ 22-37, Exs. 2-3; Dr. Patel Aff. ¶¶ 66-70; Dr. Silvoy Aff. ¶ 68; Dr. Smith Aff. ¶¶ 106-113; Dr. Ybanez Aff. ¶¶ 45-48; Dr. Lindsey Aff. ¶¶ 38-43.*

196. On information and belief, DCP provided these statistics to the manufacturer's representatives as part of its coordinated effort to aggressively promote the diagnosis and treatment of purported periodontal disease.

197. DCP Regional Clinical Advisors and others within the DCP Defendants told dentists and hygienists working in the NC Dental Practices that the hygienists were equally qualified and authorized to co-diagnose periodontal disease and recommend corresponding treatment plans, including SRP and use of Arestin. *See e.g., TRO/PI Motion, Dr. Smith Aff. ¶*

111c, Ex. 16 (¶ 3). Diagnosis of periodontal disease constitutes the practice of dentistry and is beyond the appropriate scope of practice for hygienists.

198. Hygienists employed in the NC Dental Practices had a compensation structure that the DCP Defendants designed and established, which provided for additional compensation based on their production. This compensation structure and statements by DCP Regional Clinical Advisors and others within the DCP Defendants that hygienists were equally qualified to co-diagnose provided an incentive and opportunity for hygienists to diagnose and treat periodontal disease in a manner not supported by clinical evidence and in violation of the standard of care. It also created an incentive to misdiagnose patients with periodontal disease, including documenting inaccurate clinical information, such as probing depths. *See e.g., Id., ¶ 111f, Ex. 16 (¶ 5).*

199. Additionally, hygienists in at least some of the NC Dental Practices performed more periodontal treatment than the dentist recommended and improperly charged the patients for this unsupported and unnecessary treatment. *See e.g., Id., ¶ 111e, Ex. 16 (¶ 7)*

200. In other instances, a hygienist and a non-clinical practice leader also changed the responsible dentist's treatment plan and then performed and charged for unsupported and unnecessary treatment, such as unwarranted scaling and root planning and use of Arestin. *See e.g., Id., ¶ 111d, Ex. 16 (¶ 16)*

201. DCP's Regional Clinical Advisors and others within DCP told dentists and hygienists working in its NC Dental Practices that they risked having malpractice claims or suits and discipline by the Board if they did not use the Periodontal Treatment Protocols distributed by DCP to increase their diagnosis and treatment of periodontal disease to the level purportedly existing in the general population. These statements were made without regard to the particular

patient population demographics existing in the Dental Practice or other pertinent factors and were designed to increase the profits of its NC Dental Practices through providing and billing for unnecessary dental treatment to patients. *See e.g., Id.,* ¶ *111a, Ex. 16 (*¶ 2). DCP also made similar statements in its Partner Dentist Orientation Program. *See e.g., TRO/PI Motion, Hughes Aff.,* ¶¶ *29-31, Ex. 3.*

202. As part of its multi-faceted strategy, DCP also sponsored or promoted seminars to dentists working in its NC Dental Practices that were designed to present information about diagnosing and treating periodontal disease consistent with the Periodontal Treatment Protocols it distributed.

203. As a result of the DCP Defendants' multi-prong and coordinated campaign, dentists and hygienists working in the NC Dental Practices diagnosed patients with periodontal disease when such diagnoses were not supported by clinical evidence or documentation. Based on these unsupported diagnoses, patients in the NC Dental Practices received unnecessary treatment in violation of the applicable standard of care. The patients or their insurance companies were billed for this unsupported and unnecessary treatment.

204. The Dental Board received complaints directly from patients and other dentists at several of the NC Dental Practices complaining about unsupported diagnosis and unnecessary treatments of periodontal disease.

205. After investigating these patient complaints, the Dental Board entered disciplinary orders involving five dentists and one hygienist working in the NC Dental Practices for making improper and unsupported diagnoses and providing unwarranted treatment, in violation of the applicable standard of care, including performing scaling and root planing and using Arestin.

The dentists and hygienist consented to these disciplinary orders, which were entered between June 2010 and November 2011. *Complaint Exs. 6-11; see Friddle Aff. ¶¶ 3-4, 8-9 and 14-20.*

DCP Defendants' Improper Control over other Clinical Issues and Clinical Staff

206. The Partnership Marketing Materials DCP provided to the Partner-Dentist Defendants made it clear that DCP and its unlicensed personnel expected to be directly and indirectly involved in the clinical aspects of the NC Dental Practices.

207. For example, at least some of DCP's Partnership Marketing Materials provided to the Partner-Dentist Defendants contained a separate chart entitled "Authority and Responsibilities for Clinical Issues Handled within the Professional Corporation." This chart set forth various categories and specific items and the respective responsibilities and decision-making authority for those clinical issues (hereafter, "Clinical Authority Chart"). *See TRO/PI Motion Dr. Aguero Aff., Ex. 1(p.76) ; Dr. Lindsey Aff. ¶¶ 31-35.*

208. The Clinical Authority Chart dictates that certain clinical issues within the Dental Practices must be approved by the Practice LLC Board, which was effectively controlled by DCP. The LLC Board consisted of the Partner Dentist, a Dental Director selected by DCP and one DCP Executive or Director. The DCP Dental Director and Executive were not licensed dentists in North Carolina. *See Id.*

209. Clinical matters requiring Practice LLC Board approval included approving new doctor contracts and new clinical positions, purchasing supply technology over a certain threshold amount, and adjusting compensation of clinical employees above the budget, among other clinical issues. On some issues, such as approving new clinical positions not budgeted, the Partner Dentist had no authority and that decision was required to be made and approved by the

LLC Board, consisting of a majority of DCP personnel who were not licensed dentists in North Carolina. *See Id.*

210. The Clinical Authority Chart also provides that certain clinical issues be decided after consultation with DCP's Dental Director. For example, consultation with DCP's Dental Director is required to renew contracts for existing dentist compensation, to carry out any discipline of a dentist or hygienist, and to conduct annual performance reviews for dentists and hygienists, among others. *See Id.*

211. The Clinical Authority Chart indicates that the Partner Dentist should consult with DCP clinical personnel, such as its Regional Practice Managers, Dental Directors, and with other DCP departments on various other clinical issues within the Dental Practice. *See Id.*

212. The NC Dental Practices generally operate consistent with the Clinical Authority Chart in DCP's Partnership Marketing Materials, and the LLC Board and other personnel of the DCP Defendants directly or indirectly control or have input into certain clinical aspects of the Practices. *See TRO/PI Motion, Dr. Lindsey Aff.* ¶¶ *31-36* .

213. For example, the DCP Defendants directly or indirectly control clinical aspects of its NC Dental Practices, such as directing or limiting the ordering of clinical supplies or controlling prescription of clinical products for patients. *See e.g., TRO/PI Motion , Smith Aff.,* ¶¶ *111g, 119, Ex. 16 (*¶¶ *6 and 14).*

214. The DCP Defendants also directly negotiate and contract with other dentists to provide certain specialty care, such as orthodontics and dental surgery, in its NC Dental Practices. *See e.g., TRO/PI Motion, Dr. Smith Aff.* ¶ *118; Dr. Curley Aff.* ¶¶ *20-21.*

215. The DCP Defendants enter into contracts to provide such specialty clinical services and control all material terms of the arrangement between these specialty dentists and

the professional entities whose names were used for its NC Dental Practices. The Partner-Dentist Defendants do not control or in many instances do not even have input into the material terms of those arrangements, including the amounts their Practice PAs or the Dental Practices pay for providing such clinical services. *See e.g., TRO/PI Motion, Dr. Aguero Aff. ¶ 66; Ghodke Aff. ¶¶ 52-55; Hughes Aff. ¶ 39; Johal Aff. ¶¶ 66-67; Lindsey Aff. ¶ 36; Roman Aff. ¶¶ 25-35, Ex. 27; Silvoy Aff. ¶ 72; Smith Aff. ¶ 114.*

216. As indicated in the Clinical Authority Chart, the DCP Defendants have control over or input into the agreements between the Practice PAs and the dentists and other clinical staff. In the Staff Model Dental Practices and at least some of the Partner Model Dental Practices, the DCP Defendants have:

a. direct or indirect control over the hiring and firing of clinical personnel or material terms of clinical personnel's relationship with the dentist or professional entity; and

b. direct or indirect control over or input into the material terms of the arrangement between the professional entity and dentists for the provision of dental services.

217. The DCP Defendants also have direct or indirect control over or input into clinical aspects of the NC Dental Practices through employees and officers whose responsibilities are directed at and focused on clinical issues.

218. For example, on October 5, 2012, the Chief Clinical Officer for DentalOne Partners, Dr. Charles J. Zasso, issued a memo to the Partner Dentists and other dentists in all its Dental Practices, including those in North Carolina. *See e.g., TRO/PI Motion, Dr. Alston Aff. ¶¶ 80-81, Ex. 15.* In this memorandum, the DCP Defendants announced a new clinical leadership structure for their Dental Practices, including new Regional Dental Directors. The memorandum noted that Dr. Syed Kamal was the new Regional Dental Director for various practices in the

South, including all of the North Carolina Dental Practices. Dr. Kamal is not a licensed dentist in North Carolina.

219. The memorandum further noted that DentalOne Partners' Regional Dental Directors, such as Dr. Kamal for the NC Dental Practices, would focus on the following issues, among others:

a. "mentoring and providing clinical expertise and oversight for affiliated providers,"

b. "improving clinical outcomes and overall patient experience via educating and coaching the clinical teams in real world environments,"

c. "implementing new treatment protocols to support additional treatment services for patients perhaps not previously offered, (i.e., bone preservation services, implants, etc.),"

d. "Collaboration with Regional Directors of Operations (RDOs), Senior Leaders of Operation (SLOs), in their various responsibilities regarding profitability, budget issues, doctor productivity, doctor leadership issues, company policy and other matters of clinical significance or implications," and

e. "Working with the (SLO, RDO) in their various regional responsibilities in attaining and exceeding monthly/yearly practice production/EBITDA budgets"

220. The DCP Defendants continue to have numerous personnel whose primary or exclusive responsibilities include direct or indirect control over or input into clinical aspects of the NC Dental Practices, including a Director of Clinical Development, Vice President of Clinical Development and Vice President of Clinical and Special Projects. *See e.g., TRO/PI Motion, Dr. Alston Aff., Ex.15.*

221. Thus, the DCP Defendants expected and intended to have direct or indirect control over or input into clinical aspects of the NC Dental Practices, have had input into and control over clinical issues, and expect and intend to continue having control over or input into

clinical aspects of the NC Dental Practices, as demonstrated by the recent memorandum announcing the new clinical leadership structure.

Claim for Injunctive Relief

222. The actions of the DCP Defendants set forth above violate:

a. N.C. Gen. Stat. § 90-29(a), (b)(11) and (b)(13);

b. N.C. Gen. Stat. § 90-40 and constitute a class 1 misdemeanor, with each day's violations for each of the 27 NC Dental Practices constituting a separate criminal offense beginning as early as 1995 to the present;

c. N.C. Gen. Stat. § 90-40.1(a); and

d. 21 NCAC 16X .0101 (b) and (c)(1), (3), (4), (5), (6), (7) and (8).

223. The actions of the Necessary Defendants, even if some did so unintentionally or unknowingly, violate the Dental Practice Act, N.C. Gen. Stat. §90-29(a), (b)(11) and (13), 90-40.1(a), 90-41(a)(6), (9), (13) and (26), 21 NCAC 16V .0101(11) and the Management Arrangement Rule, 21 NCAC 16X .0101(a), (b) (c), and (e).

224. The past and ongoing violations of the Dental Practice Act and of the Board's rules, including the MAR, by the Defendants cause irreparable harm by engaging in or aiding, abetting or assisting the illegal or unlawful practice of dentistry.

WHEREFORE, pursuant to N.C. Gen. Stat. §§ 90-40, 90-40.1 and 90-40.2, Plaintiff prays for the following relief from the Defendants:

1. That the DCP Defendants, any affiliates, related entities or successors, their officers, agents, servants, employees, directors, attorneys or others acting in concert or

participation with them be preliminarily and permanently enjoined from violating the Dental Practice Act, N.C. Gen. Stat. §90-29(a), (b)(11) and (b)(13), 90-40 and 90-40.1(a) and the Management Arrangement Rule, 21 NCAC 16X .0101 by:

a. owning, controlling, conducting or unlawfully managing or supervising any dental practice in North Carolina;

b. having direct or indirect control over, or input into, the clinical practices of the NC Dental Practices, the Practice PAs, the Dentist Defendants, or any other licensed NC dentists or ancillary personnel in North Carolina;

c. enforcing the provisions of any management arrangements with any Dental Practice in North Carolina that is in violation of the above laws; and

d. representing to the public, by any advertisement or announcement, by or through any media, the ability or qualification to engage in the practice of dentistry or to own, control, conduct or unlawfully manage or supervise any dental practice.

2. That the Dentist Defendants and any professional or other entities owned or controlled by them, their agents, employees, officers, directors or others acting in concert with them be preliminarily and permanently enjoined from violating the Dental Practice Act, N.C. Gen. Stat.§ §90-29(a), (b)(11) and (13), 90-40.1(a), 90-41(a)(6), (9), (13) and (26), 21 NCAC 16V .0101(11) and the Management Arrangement Rule, 21 NCAC 16X .0101 by:

a. aiding, abetting or assisting the DCP Defendants or any other person or entity from owning, controlling, conducting or unlawfully managing or supervising any dental practice in North Carolina; and

b. lending or permitting their name, diploma or license to be used in or having a professional connection with the unlawful or illegal practice of dentistry by the DCP Defendants or any other person or entity.

3. That all costs of this action permitted by law be taxed against the Defendant DCP; and

4. That the Court would grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 18th day of February, 2013.

THE BROCKER LAW FIRM, P.A.

By: [signature]

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